

*The Presidency-towns Insolvency Bill.**(Part II.—Proceedings from Act of Insolvency to Discharge.)*

(d) require the insolvent as a condition of his discharge to consent to a decree being passed against him in favour of the official assignee for any balance or part of any balance of the debts provable under the insolvency which is not satisfied at the date of his discharge; such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct; but in that case the decree shall not be executed without leave of the Court, which leave may be given on proof that the insolvent has since his discharge acquired property or income available for payment of his debts.

(2) The facts hereinbefore referred to are—

(a) that the insolvent's assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of such value has arisen from circumstances for which he cannot justly be held responsible;

(b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;

(c) that the insolvent has continued to trade after knowing himself to be insolvent;

(d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

(e) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(f) that the insolvent has brought on or contributed to his insolvency by rash or hazardous speculations or by unjustifiable extravagance in living or by gambling, or by culpable neglect of his business affairs;

(g) that the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit properly brought against him;

(h) that the insolvent has within three months preceding the time of presentation of the petition incurred unjustifiable expense by bringing a frivolous or vexatious suit;

(i) that the insolvent has within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(j) that the insolvent has concealed or removed his books or his property or any part thereof or has been guilty of any other fraud or fraudulent breach of trust.

(3) The power of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently.

(4) On any application for discharge the report of the official assignee shall be *prima facie* evidence and the Court may presume the correctness of any statement contained therein.

40. Notice of the appointment by the Court [53 & 54 Vict., c. 71, s. 8 (6)] of the day for hearing the application for discharge shall be published in the prescribed manner and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the official assignee and may also hear any creditor. At the hearing the Court may put such questions to the insolvent and receive such evidence as it may think fit.

41. If an insolvent does not appear on the day so appointed for hearing his application for discharge or if an insolvent shall not apply to the Court for an order of discharge within such time as may be prescribed, the Court, on the application of the official assignee or of a creditor or of its own motion, may annul the adjudication or make such other order as it may think fit, and the provisions of section 23 shall apply on such annulment.

42. (1) Where the Court refuses the discharge of the insolvent it may, after such time and in such circumstances as may be prescribed, permit him to renew his application.

(2) Where an order of discharge is made subject to conditions and at any time after the expiration of two years from the date of the order the insolvent shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

[Act III of 1907, s. 44 (3), 53 & 54 Vict., c. 71, s. 8.]

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Vict., c. 71,
s. 8 (8).]

43. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the official assignee may require in the realization and distribution of such of his property as is vested in the official assignee, and, if he fails to do so, shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

[46 & 47
Vict., c. 52, s. 29.]

44. In either of the following cases, that is to say:—

(1) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

if the settlor is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that the settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement.

[Ss. 48 & 62;
46 & 47
Vict., c. 52, s. 30;
Act III, 1907,
s. 45.]

45. (1) An order of discharge shall not release the insolvent from —

- (a) any debt due to the Crown;
- (b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or
- (c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party; or
- (d) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure, 1898.

V of 1898.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts provable in insolvency.

(3) An order of discharge shall be conclusive evidence of the insolvency, and of the validity of the proceedings therein. [Ss. 48 & 61;
46 & 47 Vict.,
c. 52, s. 30.]

(4) An order of discharge shall not release any person who at the date of the presentation of the petition was a partner or co-trustee with the insolvent or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him. [Ss. 59 & 60.]

PART III.

ADMINISTRATION OF PROPERTY.

Proof of debts.

46. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable in insolvency. [S. 40; 46 & 47 Vict., c. 52, s. 37; and Act III, 1907, s. 28.]

(2) A person having notice of the presentation of any insolvency petition by or against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as provided by sub-sections (1) and (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable in insolvency.

(4) An estimate shall be made by the official assignee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value:

Provided that if in his opinion the value of the debt or liability is incapable of being fairly estimated, he shall issue a certificate to that effect, and thereupon the debt or liability shall be deemed to be a debt not provable in insolvency.

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Explanation.—For the purposes of this section "liability" includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of, money, or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any contingency or contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

V of 1898.
[46 & 47
Vict., c. 52,
s. 38; Act
III, 1907, s.
30.]

47. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively:

Provided that a person shall not be entitled under this section to claim the benefits of any set-off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of the presentation of any insolvency petition by or against him.

[46 & 47
Vict., c. 52, s.
39.]

48. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the * second schedule, the rules in that schedule shall be observed.

[51 & 52
Vict., c. 62,
s. 1;
Act III, 1907,
s. 33.]

49. (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts—

(a) all debts due to the Crown or to any local authority;

(b) all salary or wages of any clerk, servant or labourer in respect of services rendered to the insolvent during * four months before the date of the presentation of the petition, not exceeding three *hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer; and

(c) rent due to a landlord from the insolvent: provided the amount payable under this clause shall not exceed one month's rent.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property. [46 & 47
Vict., c. 52, s.
40.]

(5) Subject to the provisions of this Act, all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in the insolvency.

50. After an order of adjudication has been made no distress for rent due before such order shall be made upon the goods or effects of the insolvent, unless the order be annulled, but the landlord or party to whom the rent may be due shall be entitled to prove in respect of such rent; [S. 22; Cf.
46 & 47 Vict., c. 52, s. 42.]

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Property available for payment of debts.

51. The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to and to commence at [46 & 47
Vict., c. 52,
s. 43;
[S. 7;
Act III of
1907, s. 16
(6).]

(a) the time of the commission of the act of insolvency on which an order of adjudication is made against him, or

(b) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition:

Provided that no insolvency petition or order of adjudication shall be rendered invalid by reason of any act of insolvency committed anterior to the debt of the petitioning creditor.

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[46 & 47
Vict., s. 52,
s. 44.]

52. (1) The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely:—

(a) property held by the insolvent on trust for any other person;

(b) the tools (if any) of his trade and the necessary wearing apparel, bedding, cooking vessels and furniture of himself, his wife and children, to a value, inclusive of tools and apparel and other necessities as aforesaid, not exceeding three hundred rupees in the whole.

(2) Subject as aforesaid, the property of the insolvent shall comprise the following particulars, namely:—

[S. 7.]

(a) all such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him before his discharge;

(b) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge; and

[S. 23.]

(c) all goods being at the commencement of the insolvency in the possession, order or disposition of the insolvent, in his trade or business by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof:

Provided that things in action other than debts due or growing due to the insolvent in the course of his trade or business shall not be deemed goods within the meaning of clause (c):

Provided also that the true owner of any goods which have become divisible among the creditors of the insolvent under the provisions of clause (c) may prove for the value of such goods.

Effect of insolvency on antecedent transactions.

[Cf. Act
V of 1908,
s. 73; 45 &
47 Vict., c.
52, ss. 45 &
46;
Act III, 1907,
s. 34.]

53. (1) Where execution of a decree has been issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee, except in respect of assets realized in the course of the execution by sale or otherwise before the date* of the order of adjudication and before he had

notice of the presentation of any insolvency petition by or against the debtor.

(2) Nothing in this section shall affect the right of a secured creditor in respect of property against which a decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the official assignee.

54. Where execution of a decree has issued against any property of a debtor which is saleable in execution, and before the sale thereof notice is

[53 & 54
Vict., c. 71,
s. 11;
Act III, 1907,
s. 35.]

given to the Court executing the decree that* an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the official assignee, but the costs of the execution shall be a first charge on the property so delivered, and the official assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

55. Any transfer of property, not being a transfer made before and in consideration of marriage, or made in favour

[46 & 47
Vict., c. 52,
s. 47;
Act III, 1907,
s. 36.]

of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee.

56. (1) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken

[S. 24: 46 &
47 Vict., c.
52, s. 46;
Act III, 1907,
s. 37(1).]

or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the official assignee.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

57. Subject to the foregoing provisions with respect to the effect of insolvency on an execution and with respect

[46 & 47
Vict., c. 52,
s. 49;
Act III, 1907,
s. 38.]

to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

(a) any payment by the insolvent to any of his creditors;

(b) any payment or delivery to the insolvent;

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(c) any transfer by the insolvent for valuable consideration; or

(d) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before * the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

Realization of property.

[S. 21; 46
& 47 Vict.,
c. 52, s. 50.]

58. (1) The official assignee shall, as soon as may be, take possession of the deeds, books and documents of the insolvent and all other parts of his property capable of manual delivery.

V of 1908.

(2) The official assignee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, be in the same position as if he were a receiver of the property appointed under the Code of Civil Procedure, 1908, and the Court may on his application enforce such acquisition or retention accordingly.

[S. 25.]

(3) Where any part of the property of the insolvent consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the official assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it, if he had not become insolvent.

(4) Where any part of the property of the insolvent consists of things in action, such things shall be deemed to have been duly transferred to the official assignee.

(5) Any treasurer or other officer, or any banker, attorney or agent of an insolvent, shall pay and deliver to the official assignee all money and securities in his possession or power, as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the official assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee.

[46 & 47
Vict., c. 52,
s. 51.]

59. (1) The Court may grant a warrant to any prescribed officer of the Court or any police-officer above the rank of a constable to seize any part of the property of an insolvent in the custody or possession of the insolvent or of any other person, and with a view to such seizure to break open any house, building or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be.

(2) Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any such officer as aforesaid who may execute it according to its tenor.

60. (1) Where an insolvent is an officer of the Army or Navy or of His Majesty's Royal Indian Marine Service, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the official assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may * direct.

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication and from time to time, make such order as it thinks just for the payment to the official assignee, for distribution among the creditors of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

61. The property of the insolvent shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office, without any transfer whatever.

62. (1) Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee may, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him, at any time within * twelve months after the insolvent has been adjudged insolvent, disclaim the property:

Provided that, where any such property has not come to the knowledge of the official assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within * twelve months after he has first become aware thereof.

(2) The disclaimer shall operate to determine, as from the date thereof, the rights, interests

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and liabilities of the insolvent * and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the date when the property *vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property and the official assignee from liability, affect the rights or liabilities of any other person.

63. Subject always to such rules as may be

Disclaimer of lease- made in this behalf, the holds. official assignee shall not be entitled to disclaim any leasehold interest without the leave of the Court; and the Court may before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the Court thinks just.

64. The official assignee shall not be entitled

Power. to call on to disclaim any property in official assignee to dis- pursuance of section 62 in claim. — any case where an application in writing has been made to the official assignee by any person interested in the property requiring him to decide whether he will disclaim, and the official assignee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice that he disclaims the property; and, in the case of a contract, if the official assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

65. The Court may, on the application of

Power for Court to any person who is, as rescind contract. against the official assignee, entitled to the benefit or subject to the burden of a contract made with the insolvent, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the insolvency.

66. (1) The Court may, on the application of

Power for Court to any person either claim- make vesting order in ing any interest in any respect of disclaimed disclaimed property, or property. under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the

person therein named in that behalf without any transfer for the purpose:

Provided always, that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the insolvent, whether as under-lessee or as mortgagee except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the insolvent who is willing to accept an order upon such terms, the Court shall have power to vest the insolvent's interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances and interests created therein by the insolvent.

(2) The Court may, if it thinks fit, modify the terms prescribed by the foregoing proviso so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

67. Any person injured by the operation of a Persons injured by disclaimer under the fore- disclaimer may prove. going provisions shall be deemed to be a creditor of the insolvent to the amount of the injury, and may accordingly prove the same as a debt under the insolvency.

68. (1) Subject to the provisions of this Act, [S. 31: 46 & 47 Vict., c. 52, s. 56: Act III, 1907 s. 20.] the official assignee shall, with all convenient speed, realize the property of the insolvent, and for that purpose may—

- (a) sell all or any part of the property of the insolvent;
- (b) give receipts for any money received by him;

and may, by leave of the Court, do all or any of the following things, namely:—

- (c) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same;
- (d) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent; [s. 29.]
- (e) employ * * a legal practitioner or other agent to take any proceedings or do any business which may be sanctioned by the Court;
- (f) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time

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or fully paid shares, *debentures or debenture stock* * * in any limited company subject to such stipulations as to security and otherwise as the Court thinks fit;

- [S. 28.] (g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts or for the purpose of carrying on the business;
- (h) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon;
- (i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

* * * *

(2) The official assignee shall account to the Court and pay over all moneys and deal with all securities in such manner as * * * is prescribed or as the Court directs.

Distribution of property.

[S. 41: 46 & 47 Vict., c. 52, s. 58.] 69. (1) The official assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2) The first dividend (if any) shall be declared and be distributed within six months after the adjudication, unless the official assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months.

(4) Before declaring a dividend, the official assignee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent's schedule who has not proved his debt.

(5) When the official assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and if required by any creditor a statement in the prescribed form as to the particulars of the estate.

[46 & 47 Vict., c. 52, s. 59.] 70. Where one partner in a firm * * is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other partners in the firm * * or any of them

Joint and separate properties.

shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

* * * *

71. (1) In the calculation and distribution of dividends, the official assignee shall retain in his hands sufficient assets to meet— [S. 43: 46 & 47 Vict., c. 52, s. 60, Act III, s. 39 (1),

(a) debts provable in insolvency and appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;

(b) debts provable in insolvency the subject of claims not yet determined;

(c) disputed proofs or claims; and

(d) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

72. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the official assignee any dividend or dividends which he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein. [46 & 47 Vict., c. 52, s. 61: Act III, s. 39 (3).]

73. (1) When the official assignee has realized all the property of the insolvent, or so much thereof as he can, in his opinion, be realized without needlessly protracting the proceedings in insolvency, he shall, with the leave of the Court, declare a final dividend; but, before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him but not proved that, if they do not prove their claims, to the satisfaction of the Court, within the time limited by the notice, he will proceed to make a final dividend without regard to their claims. [46 & 47 Vict., c. 52, s. 62: Act III, s. 39 (4).]

(2) After the expiration of the time so limited, or, if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of that further time, the property of the insolvent shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

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45: & 47
c. 52,
111, 1907,
s (5).]

74. No suit for a dividend shall lie against the official assignee, but, where the official assignee refuses to pay any dividend, the Court may, on the application of the creditor who is aggrieved by such refusal, * * * * * order him to pay it, and also to pay out of his own money interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application.

5 & 47
c. 52,
111, 1907,
s (5).]

75. (1) Subject to such conditions and limitations as may be prescribed, the official assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct.

[S. 47.] (2) Subject as aforesaid, the Court may, from time to time, make such allowance as it thinks just to the insolvent out of his property, for the support of the insolvent and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may at any time be varied or determined by the * * * Court.

6 & 47
c. 52,
111, 1907,
s (5).]

76. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as provided by this Act and of the expenses of the proceedings taken thereunder.

PART IV.

OFFICIAL ASSIGNEES.

[S. 14.] 77. (1) The Chief Justice of each of the High Courts of Judicature at Fort William, Madras and Bombay, and the Chief Judge of the Chief Court of Lower Burma, may from time to time appoint *substantively or temporarily* such person as he thinks fit to the office of official assignee of insolvents' estates for each of the said Courts respectively, and may, with the concurrence of a majority of the other Judges of the Court, remove the person for the time being holding that office for any cause appearing to the Court sufficient.

(2) Every official assignee shall give such security and shall be subject to such rules and shall act in such manner as may be prescribed. [S. 15.]

(3) Notwithstanding anything in sub-section (1), the persons substantively or temporarily holding the office of official assignee immediately before the commencement of this Act in the Courts for the relief of Insolvent Debtors at Calcutta, Madras and Bombay *respectively* under the Indian Insolvency Act, 1848, and in the Chief Court of Lower Burma under that Act as applied by the Lower Burma Courts Act, 1900, shall, without further appointment for that purpose, become the official assignees, substantive or temporary, as the case may be, under this Act in the High Courts at Fort William, Madras and Bombay and in the Chief Court of Lower Burma, respectively.

* * *

78. An official assignee may, for the purpose of administering oaths, administer oaths. [46 & 47, Vict., c. 52, s. 68.]

79. (1) The duties of an official assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate. [46 & 47, Vict., c. 52, s. 69.]

(2) *In particular* it shall be the duty of the official assignee—

(a) to investigate the conduct of the insolvent and to report to the Court, upon any application for discharge, stating whether there is reason to believe that the insolvent has committed any act which constitutes an offence under this Act or under sections 421 to 424 of the Indian Penal Code in connection with his insolvency or which would justify the Court in refusing, suspending or qualifying an order for his discharge;

(b) to make such other reports concerning the conduct of the insolvent as the Court may direct or as may be prescribed; and

* * *

(c) to take such part and give such assistance in relation to the prosecution of any fraudulent insolvent as the Court may direct or as may be prescribed.

* * *

*The Presidency-towns Insolvency Bill.**(Part IV.—Official Assignees. Part V.—Committee of Inspection.)*[46 & 47
Vict., c. 52,
s. 79.]

80. The official assignee shall, whenever required by any creditor so to do, and on payment by the creditor of the prescribed fee, furnish and send to the creditor by post a list of the creditors showing in the list the amount of the debt due to each of the creditors.

[S. 14: 46 &
47 Vict., c.
52, s. 72.]

81. (1) *Such* remuneration shall be paid to the official assignee as may be prescribed.

(2) No remuneration whatever beyond that referred to in sub-section (1) shall be received by an official assignee as such.

82. The Court shall call the official assignee to account for any misfeasance, neglect or omission which may appear in his accounts or otherwise, and may require the official assignee to make good any loss which the estate of the insolvent may have sustained by reason of the misfeasance, neglect or omission.

[46 & 47
Vict., c. 52,
s. 83.]

83. The official assignee may sue and be sued by the name of "the official assignee of the property of _____, an insolvent," inserting the name of the insolvent, and by that name may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

[46 & 47
Vict., c. 52,
s. 85.]

84. If an order of adjudication is made against an official assignee, he shall thereby vacate the office of official assignee.

[46 & 47
Vict., c. 52,
s. 89.]

85. (1) Subject to the provisions of this Act and to the directions of the Court, the official assignee shall, in the administration of the property of the insolvent and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting.

(2) The official assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times

as the creditors, by resolution at any meeting, or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors *who have proved*.

(3) The official assignee may apply to the Court for directions in relation to any particular matter arising under the insolvency.

(4) Subject to the provisions of this Act, the official assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

86. If the insolvent or any of the creditors, or any other person, is aggrieved by any act or decision of the official assignee, he may *appeal* to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

87. (1) If any official assignee does not faithfully perform his duties and duly observe all the requirements

imposed on him by any enactment, rules or otherwise, with respect to the performance of his duties, or if any complaint is made to the Court by any creditor in regard thereto, the Court shall enquire into the matter and take such action thereon as may be deemed expedient.

(2) The Court may at any time require any official assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency.

(3) The Court may also direct an * investigation to be made of the books and vouchers of the official assignee.

PART V.

COMMITTEE OF INSPECTION.

88. The Court may, if it so thinks fit, authorize the creditors *who have proved* to appoint from among the creditors or holders of general proxies or general powers-of-attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the * * * insolvent's property by the official assignee.

*The Presidency-towns Insolvency Bill.**(Part V.—Committee of Inspection. Part VI.—Procedure.)*

Provided that a creditor who is appointed a member of a committee of inspection shall not be qualified to act until he has proved.

89. The committee shall have such powers of control over the proceedings of the official assignee as may be prescribed.

Control of committee of inspection over official assignee.

PART VI.

PROCEDURE.

90. (1) *In proceedings under this Act the Court shall have the like powers and follow the like procedure as it has and follows in the exercise of its ordinary original civil jurisdiction:*

Provided that nothing in this sub-section shall in any way limit the jurisdiction conferred on the Court under this Act.

[46 & 47 Vict., c. 52, s. 105.] (2) Subject to the provisions of this Act and rules, the costs of and incidental to any proceeding in the Court shall be in the discretion of the Court.

(3) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose.

(4) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it thinks fit to impose.

(5) Where by this Act or by rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court thinks fit to impose.

(6) *Subject to rules* the Court may in any matter take the whole or any part of the evidence either *viva voce* or by interrogatories, or upon affidavit, or by commission.

(7) For the purpose of approving a composition or scheme by joint debtors the Court may, if it thinks fit, and on the report of the official assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

(8) *For the purposes of this Act the Chief Court of Lower Burma shall have all the powers to punish for contempt of Court which are possessed by the High Courts of Judicature at Fort William, Madras and Bombay respectively.*

[46 & 47 Vict., c. 52, s. 106: Act III, 1907, s. 8.] 91. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, or where joint debtors file separate petitions, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

[46 & 47 Vict., c. 52, s. 107: Act III, 1907, s. 9.] 92. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the

debtor is indebted in the amount required by this Act in the case of a petitioning creditor.

93. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

94. The Court may, at any time, for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

95. Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners in a firm may present a petition against any one or more partners in the firm without including the others.

96. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

97. Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or by a partner in the same firm shall be presented in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and such Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

98. (1) Where a partner in a firm is adjudged insolvent, the Court may authorize the official assignee to continue or commence and carry on any suit or other proceeding in his name and that of the insolvent's partner; and any release by the partner of the debt or demand to which the proceeding relates shall be void.

(2) Where application for authority to continue or commence any suit or other proceeding has been made under sub-section (1), notice of the application shall be given to the insolvent's partner and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

99. (1) Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm:

*The Presidency-towns Insolvency Bill.**(Part VI.—Procedure. Part VII.—Limitation. Part VIII.—Penalties.)*

Provided that in that case the Court may, on application by any person interested, order the names of the persons who are partners in the firm, or the name of the person carrying on business under a partnership name, to be disclosed in such manner and verified on oath or otherwise, as the Court may direct.

(2) *In the case of a firm in which one partner an infant, an adjudication order may be made against the firm other than the infant partner.*

[*cf.* 46 & 47 Vict., c. 52, s. 119.] 100. (1) A warrant of arrest issued by the Warrants of Insol. Court may be executed in the same manner and subject to the same conditions as a warrant of arrest issued under the Code of Criminal Procedure, 1898, may be executed.

V of 1898.

(2) A warrant to seize any part of the property of an insolvent, issued by the Court under section 59, sub-section (1), shall be in the form prescribed, and sections 77(2), 79, 82, 83, 84 and 102 of the said Code shall, so far as may be, apply to the execution of such warrant.

(3) A search-warrant issued by the Court under section 59, sub-section (2), may be executed in the same manner and subject to the same conditions as a search-warrant for property supposed to be stolen may be executed under the said Code.

PART VII.

LIMITATION.

101. The period of limitation for an appeal from any act or decision of the Official Assignee or from an order made by an officer of the Court empowered under section 6 shall be twenty days from the date of such act, decision or order, as the case may be.

PART VIII.

PENALTIES.

[Act III, 1907
s. 53 (1).]

102. An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate,

be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

* * *

Punishment of insolvents for certain offences. 103. Any person adjudged insolvent who— [Cf. Deb Act, 1869 s. 11.]

(a) fraudulently with the intent to conceal the state of his affairs or to defeat the objects of this Act,

(i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(ii) has kept or caused to be kept false books, or

(iii) has made false entries in or withheld entries from, or wilfully altered or falsified any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(b) fraudulently with intent to diminish the sum to be divided amongst his creditors or of giving an undue preference to any of the said creditors,

(i) has discharged or concealed any debt due to or from him, or

(ii) has made away with, charged, mortgaged or concealed any part of his property of what kind soever,

shall on conviction be punishable with imprisonment for a term which may extend to two years.

104. (1) Where the official assignee reports to the Court that in his opinion an insolvent has been guilty of any offence under section 103, [Cf. Deb Act, 1869 s. 16.]

Procedure on charge under section 103.

*The Presidency-towns Insolvency Bill.**(Part VIII.—Penalties. Part IX.—Small Insolvencies. Part X.—Special Provisions)*

or where the Court is satisfied upon the representation of any creditor that there is ground to believe that the insolvent has been guilty of any such offence, the Court may direct that a notice be served on the insolvent in the prescribed manner to show cause why a charge or charges should not be framed against him.

(2) The notice shall set forth the substance of the offence and any number of offences may be set forth in the same notice.

(3) At the hearing of such notice and of any charge framed in pursuance thereof the Court shall, so far as may be, follow the procedure for the trial of warrant cases by Magistrates prescribed by Chapter XXI of the Code of Criminal Procedure, 1898, and nothing in Chapter XXIII of the said Code relating to trials before High Courts and Courts of Session shall be applicable to such trial.

(4) Any number of offences under this Act may be charged at the same time.

105. Where an insolvent has been guilty of Criminal liability any of the offences specified after discharge or fined in section 102 or section 103, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

PART IX.

SMALL INSOLVENCIES.

106. Where * * * the Summary administration in small cases. Court is satisfied by affidavit or otherwise, or the official assignee reports to the Court, that the property of * an insolvent is not likely to exceed in value three thousand rupees or such other less amount as may be prescribed, the Court may make an order that the insolvent's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely:—

(a) no appeal shall lie from any order of the Court, except by leave of the Court;

(b) no examination of the insolvent shall be held except on the application of a creditor or the official assignee;

(c) the estate shall, where practicable, be distributed in a single dividend;

(d) such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the * discharge of the * insolvent.

(2) The Court may at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate.

PART X.

SPECIAL PROVISIONS.

107. No insolvency petition shall be presented [46 & 47 against any corporation or Vict., c. 52, against any association or s. 133, company registered under Act III, 1907, s. 6,] for the time being in force.

108. (1) Any creditor of a deceased debtor [46 & 47 in whose debt would have Vict., c. 52, been sufficient to support s. 135.] an insolvency petition against the debtor, had he been alive, may present to the Court within the limits of whose ordinary original civil jurisdiction the debtor resided or carried on business for the greater part of the six months immediately prior to his decease, a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor under this Act.

(2) Upon the prescribed notice being given to the * legal representative of the deceased debtor, the Court may, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs.

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(Part X.—Special Provisions Part XI.—Rules.)

(3) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of justice for the administration of the deceased debtor's estate; but that Court may in that case, * * *

* on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in insolvency under this Act, and thereupon the last-mentioned Court may make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

109. (1) Upon an order being made for the administration of a deceased debtor's estate under section 108, the property of the debtor shall vest in the official assignee of the Court, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act.

(2) With the modification hereinafter mentioned, all the provisions of Part III, relating to the administration of the property of an insolvent, shall, so far as the same are applicable, apply to the case of such administration order in like manner as to an order of adjudication under this Act.

(3) In the administration of the property of the deceased debtor under an order of administration, the official assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(4) If, on the administration of a deceased debtor's estate any surplus remains in the hands of the official assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of insolvency, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

110. (1) After notice of the presentation of a petition under section 108 no payment or transfer of property made by the

Payments or transfer by legal representatives.

legal representative shall operate as a discharge to him as between himself and the official assignee.

(2) Save as aforesaid nothing in section 108 or section 109 or this section shall invalidate any payment made or act or thing done in good faith by the legal representative or by a District Judge acting under the powers conferred on him by section 64 of the Administrator General's Act, 1874, before the date of the order for administration.

III. The provisions of sections 108, 109 and 110 shall not apply to any case in which probate or letters of administration to the estate of a deceased debtor have been granted to an Administrator General. II of 1874.

PART XI.

RULES.

112. (1) The Courts having jurisdiction under this Act may from time to time make rules for carrying into effect the objects of this Act. [S. 76.]

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

- (a) the fees and percentages to be charged under this Act and the manner in which the same are to be collected and accounted for and the account to which they are to be paid;
- (b) the investment, whether separately or collectively, of unclaimed dividends, balances and other sums appertaining to the estates of insolvent debtors whether adjudicated insolvent under this or any former enactment; and the application of the proceeds of such investment;
- (c) the proceedings of the official assignee in taking possession of and realizing the estates of insolvent debtors;
- (d) the remuneration of the official assignee;
- (e) the receipts, payments and accounts of the official assignee;
- (f) the audit of the accounts of the official assignee;

* * *

The Presidency towns-Insolvency Bill.
(Part XI.—Rules Part XII—Supplemental.)

- (g) the payment of the remuneration of the official assignee, of the costs, charges and expenses of his establishment, and of the costs of the audit of his accounts out of the proceeds of the investments in his hands;
- (h) the payment of the costs incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the official assignee under the direction of the Court out of the proceeds aforesaid;
- (i) the payment of any civil liability incurred by an official assignee acting under the order or direction of the Court;
- (j) the proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors;
- (k) the intervention of the official assignee at the hearing of applications and matters relating to insolvent debtors and their estates;
- (l) the examination by the official assignee of the books and papers of account of undischarged insolvent debtors;
- (m) the service of notices in proceedings under this Act;
- * * *
- (n) the appointment, meetings and procedure of committees of inspection;
- (o) the conduct of proceedings under this Act in the name of a firm;
- * * *
- (p) the forms to be used in proceedings under this Act;
- (q) the procedure to be followed in the case of estates to be administered in a summary manner;
- (r) the procedure to be followed in the case of estates of deceased persons to be administered under this Act.

113. Rules made under the provisions of this Part shall be subject, in the case of the High Court of Judicature at Fort William in Bengal, to the previous sanction of the Governor General in Council, and, in the case of any other Court, of the Local Government.

114. Rules so made and sanctioned shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall thereupon have the same force and effect with regard to proceedings under this Act in the Court which made them as if they had been enacted in this Act.

PART XII.
SUPPLEMENTAL.

* * *

115. (1) Every transfer, mortgage, assignment, power-of-attorney, proxy paper, certificate, affidavit, bond or other proceedings, instrument or writing whatsoever before or under any order of the Court, and any copy thereof shall be exempt from payment of any stamp or other duty whatsoever.

(2) No stamp duty or fee shall be chargeable for any application made by the official assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application.

116. (1) A copy of the official Gazette containing any notice inserted in pursuance of this Act shall be evidence of the facts stated in the notice.

(2) A copy of the official Gazette containing any notice of an adjudication order shall be conclusive evidence of the order having been duly made, and of its date.

* * *

The Presidency-towns Insolvency Bill.
(Part XII.—Supplemental.)

[S. 68;
46 & 47
Vict., c. 52,
s. 135;
Act V of
1908,
s. 130.]

117. Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn—

(a) in British India, before—

(i) any Court or Magistrate, or

(ii) any officer or other person appointed to administer oaths under the Code of Civil Procedure, 1908;

(b) in England, before any person authorized to administer oaths in His Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorized in writing in that behalf by the Judge of the Court or before a Justice of the Peace for the county or place where it is sworn;

(c) in Scotland or in Ireland, before a Judge Ordinary, Magistrate or Justice of the Peace; and,

(d) in any other place before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by a British Minister or British Consul or British Political Agent or by a notary public).

[46 & 47
Vict., c. 52,
s. 143.]

118. (1) No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment of an official assignee or member of a committee of inspection shall vitiate any act done by him in good faith.

XXVII of
1866.
[56 & 57
Vict., c. 53,
s. 25.]

119. Where an insolvent is a trustee within the Indian Trustee Act, 1866, section 35 of that Act shall have effect so as to authorize the appointment of a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act, and

of any other Act relative thereto, shall have effect accordingly.

120. Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown.

121. Nothing in this Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had immediately before the commencement of this Act, or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the Relief of Insolvent Debtors.

* * *

122. Where the official assignee has under his control any dividend which has remained unclaimed for fifteen years from the date of declaration or such less period as may be prescribed, he shall pay the same to the account and credit of the Government of India, unless the Court otherwise directs.

123. Any person claiming to be entitled to any monies * * * paid to the account and credit of the Government of India under section 122, may apply to the Court for an order for payment to him of the same; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due:

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of the Government of India, the Court shall cause a notice to be served on such officer as the Governor General in Council may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.

* * *

*The Presidency-towns Insolvency Bill.**(Part XII—Supplemental. The First Schedule.—Meeting of Creditors).*

[Bankruptcy
Rules, 1883,
Rule 349.]

124. (1) No person shall, as against the official assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent or to set up any lien thereon.

(2) Any creditor of the insolvent may, subject to the control of the Court, and on payment of such fee, if any, as may be prescribed, inspect at all reasonable times, personally or by agent, any such books in the possession of the official assignee.

[New.]
[s. 3.]

125. Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be prescribed.

[46 & 47
Vict., c. 52,
s. 118:]

126. All Courts having jurisdiction under this Act shall make such orders and do such things as may be necessary to give effect to section 118 of the Bankruptcy Act, 1883, and to section 50 of the Provincial Insolvency Act, 1907.

[46 & 47
Vict., c. 52,
s. 169.]

127. (1) The enactments mentioned in the third schedule are hereby repealed to the extent specified in the fourth column thereof.

(2) Notwithstanding the repeal effected by this Act, the proceedings under an insolvency petition under the Indian Insolvency Act, 1848, pending at the commencement of this Act shall, except so far as any provision of this Act is expressly applied to pending proceedings, continue and all the provisions of the said Indian Insolvency Act shall, except as aforesaid, apply thereto, as if this Act had not been passed.

[11 & 12 Vict.,
c. 21.]

THE FIRST SCHEDULE.

(See section 26.)

MEETINGS OF CREDITORS.

[B. A. 1st
Schedule 5.
Madras Rule
56.]

1. The official assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or by the creditors by resolution at any meeting or whenever requested in writing by one-fourth in value of the creditors.

2. Meetings shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the insolvent's schedule, or such other address as may be known to the official assignee.

3. The notice of any meeting shall be sent off not less than seven days before the day appointed for the meeting and may be delivered personally or sent by prepaid post letter, as may be convenient. The official assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper or in the local official Gazette.

4. It shall be the duty of the insolvent to attend any meeting which the official assignee may, by notice, require him to attend, and any adjournment thereof. Such notice shall be either delivered to him personally or sent to him at his address by post at least three days before the date fixed for the meeting.

5. The proceedings held and resolutions passed at any meeting shall, unless the Court otherwise orders, be valid, notwithstanding that any creditor has not received the notice sent to him.

6. A certificate of the official assignee that the notice of any meeting has been duly given, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

7. Where on the request of creditors the official assignee summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the costs of summoning the meeting, including all disbursements: Provided that the official assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting.

The Presidency-towns Insolvency Bill.
(The First Schedule.—Meetings of Creditors.)

- [Madras Rule 63, 1st Schedule 7.] 8. The official assignee shall be the chairman of any meeting.
Chairman.
- [Madras Rule 64 (1), 1st Schedule 8.] 9. A creditor shall not be entitled to vote at a meeting unless he has duly proved a debt provable in insolvency to be due to him from the insolvent, and the proof has been duly lodged one clear day before the time appointed for the meeting.
Right to vote.
- [1st Schedule 9.] 10. A creditor shall not vote at any such meeting in respect of certain debts, any unliquidated or contingent debt, or any debt the value of which is not ascertained.
No vote in respect of certain debts.
- [1st Schedule 10, Madras 64 (2).] 11. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.
Secured creditor.
- [Madras Rule 64 (4) B. R. 221.] 12. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the insolvent is liable, such bill of exchange, note, instrument or security must, subject to any special order of the Court made to the contrary, be produced to the official assignee before the proof can be admitted for voting.
Proof in respect of negotiable instruments.
- [Madras Rule 64 (3) cf. 1st Schedule 12.] 13. It shall be competent to the official assignee, within twenty-eight days after a proof is filed, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated.
Power to require assignee to give up security.
- [1st Schedule 13.] 14. If one partner in a firm is adjudged insolvent, any creditor to whom that partner is indebted jointly with the other partners in the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.
Proof by partner.
- [1st Schedule 14.] 15. The official assignee shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.
Power of official assignee to admit or reject proof.
- [1st Schedule 15.] 16. A creditor may vote either in person or by proxy.
Proxy.
- [B. A. 1890, 22.] 17. Every instrument of proxy shall be in the prescribed form and shall be issued by the official assignee.
Instrument of proxy.
- [1st Schedule 17.] 18. A creditor may give a general proxy to his attorney or to his manager, or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.
General proxy.
- [1st Schedule 19. B. R. 245 (2) (3).] 19. A proxy shall not be used unless it is deposited with the official assignee one clear day before the time appointed for the meeting at which it is to be used.
Proxy to be deposited one day before date of meeting.
- [1st Schedule 21.] 20. A creditor may appoint the official assignee as assignee to act as his proxy.
Official assignee as assignee to act as his proxy.
- [1st Schedule 22.] 21. The official assignee may adjourn the meeting from time to time and from place to place, and no notice of the adjournment shall be necessary.
Adjournment of meeting.
- [Madras Rule 69, cf. 1st Schedule 25.] 22. The official assignee shall draw up a minute of the proceedings at the meeting and shall sign the same.
Minute of proceedings.

THE SECOND SCHEDULE.

(See section 48.)

PROOF OF DEBTS.

Proofs in ordinary cases.

- [46 & 47 Vict. c. 52, Sch. II.] 1. Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication.
Time for lodging proof.
2. A proof may be lodged by delivering or sending by post in a registered letter to the official assignee an affidavit verifying the debt.
Mode of lodging proof.
3. The affidavit may be made by the creditor himself or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.
Authority to make affidavit.
4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official assignee may at any time call for the production of the vouchers.
Contents of affidavit.
5. The affidavit shall state whether the creditor is or is not a secured creditor.
Affidavit to state if creditor holds security.
6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.
Cost of proving debts.

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(*The Second Schedule.—Proof of Debts.*)

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.

8. A creditor in lodging his proofs shall deduct from his debt all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by secured creditors.

9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

10. If a secured creditor surrenders his security to the official assignee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. (1) Where a security is so valued the official assignee may at any time redeem it on payment to the creditor of the assessed value.

(2) If the official assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee, or as, in default of agreement, the Court may direct. If the sale is by public auction, the creditor, or the official assignee on behalf of the estate, may bid or purchase:

Provided that the creditor may at any time, by notice in writing, require the official assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the official assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the official assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the Court, that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and

upon such terms as the Court shall order, unless the official assignee shall allow the amendment without application to the Court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act.

Taking Accounts of Property Mortgaged, and of the Sale thereof.

18. Upon application by any person claiming to be a mortgagee of any part of the bankrupt's real or leasehold estate, and whether such mortgage is by deed or otherwise, and whether the same is of a legal or equitable nature, or upon application by the official assignee with the consent of such person claiming to be a mortgagee as aforesaid, the Court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it is found that such person is such mortgagee, and if no sufficient objection appears to the title of such person to the sum claimed by him under such mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest and costs due upon such mortgage, and of the rents and profits, or dividends, interest or other proceeds received by such person, or by any other person by his order or for his use in case he has been in possession of the property over which the mortgage extends, or any part thereof, and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the Court thinks fit, when and where, and by whom and

[B. R. 73.]

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(The Second Schedule.—Proof of Debts.)

in what way the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the official assignee (unless it is otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

[B. R. 74.] 19. All proper parties shall join in the conveyance to the purchaser, as the Court directs.

[B. R. 75.] 20. The moneys to arise from such sale shall be applied, in the first place, in payment of the costs, charges and expenses of and occasioned by the application to the Court, and of such sale and the commission (if any) of the official assignee, and in the next place in payment and satisfaction, so far as the same extend, of what shall be found due to such mortgagee, for principal, interest and costs, and the surplus of the said moneys (if any) shall then be paid to the official assignee. But if the moneys to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared.

[B. R. 76.] 21. For the better taking of such inquiries Proceedings on in- and accounts, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as the Court thinks fit, and shall produce before the Court upon oath all deeds, papers, books and writings in their respective custody or power relating to the estate or effects of the insolvent as the Court directs.

Periodical payments.

22. When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

[Act III, 1907, s. 32 (2).] 23. (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insol-

vent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum—

- (a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or,
- (b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved in insolvency includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Debt payable at a future time.

24. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted. [Act III, 1907, s. 29.]

Admission or rejection of proofs.

25. The official assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

26. If the official assignee thinks that a proof has been improperly admitted, the Court may, on the application of the official assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

27. The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee declines to interfere.

The Presidency-towns Insolvency Bill.
(The Third Schedule.—Enactments Repealed.)

in the matter, or in the case of a composition or
 scheme upon the application of the insolvent.

* * * *

THE THIRD SCHEDULE.

(See section 127.)

ENACTMENTS REPEALED.

| Year. | No. | Short title. | Extent of repeal. |
|--|--------------------------|---|---|
| I.—STATUTE. | | | |
| 1848 | 11 & 12 Vict., c. 21. | The Indian Insol- vency Act, 1848. | So much as has not been repeal- ed. |
| II.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL. | | | |
| 1841 | XXVII | The Insolvent Estates (Un- claimed Divi- dends) Act, 1841. | So much as has not been re- pealed. |
| 1898 | X | The Indian Insol- vency Rules Act, 1898. | Sections 2 and 3. |
| 1900 | VI | The Lower Burma Courts Act. | Section 8, sub- section (1), clause (d), and sub-section (2); and in section 17, in sub-section (1) the words "an official assign- ee", and in sub-sections (2) and (4) the words "official assignee." |
| 1908 | V | The Code of Civil Procedure, 1908. | Section 120, sub- section (2). |

J. M. MACPHERSON,

Secretary to the Government of India.



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CALCUTTA, SATURDAY, FEBRUARY 27, 1909

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 23.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill further to amend the Whipping Act, 1864, and the Code of Criminal Procedure, 1898 was presented to the Council of the Governor General of India for the purpose of making Laws and Resolutions on the 26th February 1909:—

WE, the undersigned, Members of the Select Committee to which the Bill further to amend the Whipping Act, 1864, and the Code of Criminal Procedure, 1898, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with a consolidating Bill, proposed by us for adoption in place of the original amending Bill, annexed thereto.

From Chief Commissioner, Coorg, No. 908, dated 5th May 1908, and enclosure [Papers No. 1].
From Government, Bengal, No. 1881-J., dated 28th April 1908, and enclosure [Papers No. 2].
From High Court, Calcutta, No. 340, dated 18th May 1908 [Paper No. 3].
From Government, Punjab, No. 275 Home-Judicial, dated 25th May 1908, and enclosure [Papers No. 4].
From Chief Commissioner, North-West Frontier Province, No. 1532-G., dated 3rd June 1908, and enclosure [Papers No. 5].
From Chief Commissioner, British Baluchistan, No. 3705, dated 15th June 1908 [Paper No. 6].
From Chief Commissioner, Ajmer-Merwara, No. 754, dated 20th June 1908, and enclosure [Papers No. 7].
From Government, United Provinces, No. 1900, dated 27th June 1908, and enclosures [Papers No. 8].
From Government, Bombay, No. 3545, dated 6th July 1908, and enclosures [Papers No. 9].
From Government, Burma, No. 331 M.—L.—17, dated 25th June 1908, and enclosures [Papers No. 10].
From Chief Commissioner, Central Provinces, No. 1270—V.—4-1, dated 22nd June 1908, and enclosure [Papers No. 11].
From Government, Madras, No. 902, dated 1st July 1908, and enclosures [Papers No. 12].
From Government, Eastern Bengal and Assam, No. 3491-J., dated 5th August 1908, and enclosures [Papers No. 13].

2. The Whipping Act, 1864, has already been the subject of various partial repeals and amendments, and very little of the original Act now remains on the Statute-book. A further amending Act does not in the circumstances seem to be desirable. We have,

therefore, prepared a consolidating Bill, which repeals the Whipping Act, 1864, with its amending enactments, and reproduces the law as contained therein with the amendments proposed in the Bill as introduced and certain further amendments now suggested by us. These are explained below in connection with the clauses of our consolidating Bill.

3. *Clause 3.*—By the Bill as introduced it was proposed to omit clause (3) of section 2 of the Whipping Act, 1864, relating to thefts by clerks or servants. In order to make, the effect of this omission more clear we have added words to sub-clause (a) of this clause, which relates to thefts generally, expressly excepting such thefts from its scope.

4. *Clause 4.*—To the offences specified in clause 3 of the Bill as introduced we have [see sub-clause (b)] added unnatural offences when committed on unwilling victims. We consider whipping to be a very suitable punishment for such an offence.

5. *Clause 5.*—We have amended section 5 of the Whipping Act, 1864 (juvenile offenders), to which this clause corresponds, so as to expressly exclude from the punishment of whipping all offences under the Indian Penal Code which are of a political character and to allow whipping for offences punishable with imprisonment under any other law only when such offences are notified by the Governor General in Council in that behalf.

6. *The Schedule.*—It has been brought to our notice that the special provisions contained in the Burma Laws Act, 1898, relating to the punishment of whipping in Upper Burma, are no longer required; we have accordingly included them in the schedule of enactments proposed for repeal.

7. The publication ordered by the Council has been made as follows:—

In English.

| <i>Gazette.</i> | <i>Date.</i> |
|--|------------------|
| Gazette of India | 14th March 1908. |
| Fort Saint George Gazette | 24th March 1908. |
| Bombay Government Gazette | 19th March 1908. |
| Calcutta Gazette | 18th March 1908. |
| United Provinces of Agra and Oudh Government Gazette | 21st March 1908. |
| Punjab Government Gazette | 27th March 1908. |
| Burma Gazette | 28th March 1908. |
| Eastern Bengal and Assam Gazette | 25th March 1908. |
| Central Provinces Gazette | 21st March 1908. |
| Coorg District Gazette | 1st April 1908. |
| Sind Official Gazette | 20th March 1908. |

In the Vernaculars.

| <i>Province.</i> | <i>Language.</i> | <i>Date.</i> |
|---|----------------------|------------------|
| Madras | Tamil | 7th April 1908. |
| | Telugu | |
| | Hindustāni | |
| | Kanarese | |
| | Malayalam | |
| Bombay | Uriya | 14th April 1908. |
| | Marāthi | 7th May 1908. |
| | Gujrāti | |
| | Kanarese | |
| | Hindi | |
| Bengal | Bengali | 24th March 1908. |
| | Bengali | 31st March 1908. |
| | Uriya | 9th April 1908. |
| United Provinces of Agra and Oudh | Urdu | 9th May 1908. |
| Punjab | Urdu | |
| Burma | Burmese | 4th April 1908. |
| Eastern Bengal and Assam | Bengali | 11th April 1908. |
| Sindh | Sindhi | 7th May 1908. |

8. We think that the Bill has not been so altered as to require re-publication, and we recommend that the consolidating Bill proposed by us be passed.

H. ADAMSON.
H. ERLE RICHARDS.
W. W. DREW.
RAMESHWARA SINGH.
MOHAMED ALI MOHAMED.

The 18th February, 1909.

[AS AMENDED BY SELECT COMMITTEE.]

[The italics represent the further amendments suggested by the Select Committee. The rest of the Bill reproduces the existing law with the amendments proposed in the original Bill.]

A Bill to consolidate and amend the law relating to the punishment of whipping.

WHEREAS it is expedient to consolidate and amend the law relating to the punishment of whipping; It is hereby enacted as follows:—

1. (1) This Act may be called the Whipping Short title and ex- Act, 1909; and tent.

(2) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas.

[Act VI, 1864, s. 1.] XLV of 1860. 2. In addition to the punishments described in section 53 of the Indian Penal Code, offenders are also liable to the punishment of whipping.

[Do., s. 2: amended as proposed by cl. 2 of Bill.] 3. Whoever commits any of the following offences, namely:—

XLV of 1860. (a) theft, as defined in section 378 of the Indian Penal Code *other than theft by a clerk or servant of property in possession of his master;*

(b) theft in a building, tent or vessel, as defined in section 380 of the said Code;

(c) theft after preparation for causing death or hurt, as defined in section 382 of the said Code;

(d) lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section;

(e) lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section;

may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the said Code.

[Do., ss. 3, 4 & 4A substituted as proposed by cl. 3 of Bill.]

XLV of 1860.

4. Whoever—

(a) abets, commits or attempts to commit, rape, as defined in section 375 of the Indian Penal Code;

(b) *compels, or induces any person by fear of bodily injury, to submit to an unnatural offence as defined in section 377 of the said Code;*

(c) voluntarily causes hurt in committing or attempting to commit robbery, as defined in section 390 of the said Code;

(d) commits dacoity as defined in section 391 of the said Code;

may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence, abetment or attempt be liable under the said Code.

5. Any juvenile offender who abets, commits or attempts to commit— Juvenile offenders when punishable with whipping. [Do., s. 5 amended.]

(a) any offence punishable under the Indian Penal Code, *except offences specified in Chapter VI and in sections 153A and 505 of that Code and offences punishable with death, or*

(b) any offence punishable under any other law with imprisonment, *which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf,*

may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable.

Explanation.—In this section the expression “juvenile offender” means an offender whom the Court, after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive.

6. Whenever any Local Government has, by notification in the official Gazette, declared the provisions of this section to be in force in any frontier district or any wild tract of country within the jurisdiction of such Local Government, any person who in such district or tract of country after such notification as aforesaid commits any offence punishable under the Indian Penal Code with imprisonment for three years or upwards, may be punished with whipping in lieu of any other punishment to which he may be liable under the said Code.

Special provision as to punishment with whipping in frontier districts.

7. To section 392, sub-section (2), of the Code of Criminal Procedure, 1898, the words “and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes” shall be added. [Bill, cl. 7.] V of 1898.

8. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

Repeals.

THE SCHEDULE.
(See section 8.)
ENACTMENTS REPEALED.

| 1 | 2 | 3 | 4 |
|-------|-----|-------------------------|-------------------|
| Year. | No. | Subject or short title. | Extent of repeal. |

Acts of the Governor General in Council.

| | | | |
|------|------|--|--|
| 1864 | VI | The Whipping Act, 1864. | So much as is unrepealed. |
| 1895 | III | The Indian Criminal Law Amendment Act, 1895. | Section 5. |
| 1898 | V | The Code of Criminal Procedure, 1898. | The words "whipping (if specially empowered)" in sub-section (1) and sub-section (3) of section 32. [Bill, cl. 6.] |
| | | | The words and figures "(1) Power to pass sentences of whipping, section 32" under the heading "Powers with which a Magistrate of the second class may be invested" in Schedule IV. |
| 1898 | XIII | The Burma Laws Act, 1898. | Section 4, sub-section (3), clause (b), and the Second Schedule. |
| 1900 | V | The Whipping Act, 1900. | The whole Act. |

J. M. MACPHERSON,
Secretary to the Government of India.

| 1 | 2 | 3 | 4 | 1 | 2 | 3 | 4 |
|---|----------------------|--|--|---|----------------------|--|---|
| Year. | No. | Short title. | Amendments. | Year. | No. | Short title. | Amendments. |
| <i>Acts of the Governor General in Council—contd.</i> | | | | <i>Acts of the Governor General in Council—concl.</i> | | | |
| 1877 | XI— <i>contd.</i> | The Military Lunatics Act, 1877— <i>contd.</i> | <p>that he should be detained in military custody until he can be conveniently sent to England, such administrative medical officer may, if he thinks fit, make an order under his hand for the reception of the said lunatic into any lunatic asylum which has been duly authorized for the purpose by the Governor General in Council ;</p> <p>and the officer in charge of such asylum shall receive the lunatic into the asylum, and detain him therein until he is discharged therefrom, in accordance with the military regulations in force for the time being or until such administrative medical officer applies for his transfer to the military authorities in view to his removal to England."</p> <p>In section 7, for the words "general officer commanding the district or force" substitute the words "general or other officer commanding the division, district, brigade or force," and omit the word "other," before the words "officer authorized."</p> | 1902 | II— <i>contd.</i> | The Cantonments (House Accommodation) Act, 1902— <i>contd.</i> | <p>In section 11, clause (a), for the words "General Officer of the Command" substitute the words "Officer Commanding the Division."</p> <p>In section 15, sub-section (1), for the word "District" substitute the word "Division."</p> <p>In section 35, sub-section (1), for the words "General Officer of the Command" substitute the words "Officer Commanding the Division."</p> <p>In section 36, sub-sections (2) and (3), for the words "General Officer of the Command," wherever they occur, substitute the words "Officer Commanding the Division."</p> <p>In section 37, for the words "General Officer of the Command" substitute the words "Officer Commanding the Division."</p> <p>In section 39, sub-sections (2), (3) and (4), for the word "District" substitute the word "Division."</p> |
| 1889 | XIII | The Cantonments Act, 1889. | <p>In section 13, for the words "European soldier, or to or for the use of any European or Eurasian being a follower or a soldier's wife" substitute the words "soldier, or follower, or soldier's wife".</p> <p>In section 15, sub-section (1), after the words "police-officer" insert the words "or excise-officer".</p> | 1903 | VII | The Indian Works of Defence Act, 1903. | <p>In section 2, for clauses (c) and (d) substitute the following :—</p> <p>"(c) the expression 'Division' means one of the Divisions into which the Army in India is, for the time being, divided, and includes the Bannu, Derajat and Kohat Independent Brigades ;</p> <p>(d) the expression 'General Officer Commanding the Division' means the General Officer Commanding a Division, and includes the General Officers Commanding the Bannu, Derajat and Kohat Brigades."</p> <p>In section 7—</p> <p>(1) in clause (a), sub-clauses (i) and (iv), and clause (b), sub-clauses (i) and (ii), for the words "General Officer of the Command" substitute the words "General Officer Commanding the Division";</p> <p>(2) in clause (a), sub-clause (ii), and clause (b), sub-clause (i), for the word "District" substitute the words "Division, District or Brigade."</p> |
| 1902 | II | The Cantonments (House Accommodation) Act, 1902. | <p>In section 2, sub-section (1), for clauses (b) and (c) substitute the following :—</p> <p>"(b) 'Division' means one of the Divisions into which the Army in India is, for the time being, divided, and includes the Bannu, Derajat and Kohat Independent Brigades ;</p> <p>(c) 'Officer Commanding the Division' means the Officer Commanding a Division, and includes the Officers Commanding the Bannu, Derajat and Kohat Brigades";</p> <p>in clause (e), for the words "General Officer of the Command" substitute the words "Officer Commanding the Division."</p> <p>In section 10, sub-section (1), for the words "General Officer of the Command" substitute the words "Officer Commanding the Division."</p> | | | | |

STATEMENT OF OBJECTS AND REASONS.

THE principal object of this Bill is to effect certain amendments in the Military Lunatics Act, 1877, the Cantonments (House Accommodation) Act, 1902, and the Indian Works of Defence Act, 1903, which are necessitated by the abolition of Commands and the reorganization of the Army in India.

The opportunity is also taken to remedy certain other defects in the Military Lunatics Act, 1877. All Administrative Medical Officers are now given power by section 3 to make an order for the reception of a military lunatic into any asylum (duly authorized by the Governor General in Council,) or to apply for his transfer to the military authorities with a view to his removal to England.

In section 7 the word "other" before the words "officer authorized" is meaningless and has been omitted.

It has been found that the names of volunteers remain on the rolls of their corps after they have become ineffective from various causes, as the Commanding Officer has not the power to remove the name of a man from the rolls of the Corps in such circumstances.

The opportunity is taken of remedying this defect in the Act.

It is considered desirable, for the purpose of admitting of better control over the sale or supply of spirituous liquors or intoxicating drugs to Native troops and followers in cantonments or within such limits around a cantonment as the Local Government may prescribe by notification in the official Gazette, that section 13 of the Cantonments Act, 1889, should be made applicable to Native troops and followers, so as to provide for the infliction of penalties in cases where a person sells such liquors or drugs to the said Native troops or followers, without having first obtained the necessary permission from the Commanding Officer of the cantonment or from some person authorized by the Commanding Officer to grant such permission.

With the object of facilitating the apprehension of offenders who sell liquor to soldiers or their families or to followers contrary to law, it is considered desirable to expand the provisions of section 15 of the Cantonments Act, 1889, so as to empower excise-officers to take action under that section, that is to say, to arrest without an order from a Magistrate, and without a warrant, any person committing an offence under sections 13 and 14.

KITCHENER,
General.

The 11th March 1909.

J. M. MACPHERSON,
Secretary to the Government of India.



The Gazette of India.

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CALCUTTA, SATURDAY, JANUARY 16, 1909.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART VI.

Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS
UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS,
1861 AND 1892 (24 & 25 VICT., C. 67,
AND 55 & 56 VICT., C. 14).

The Council met at Government House, Calcutta, on Friday, the 15th January 1909.

PRESENT:

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.
His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., G.C.I.E., Commander-in-Chief in India.
The Hon'ble Sir Erle Richards, K.C.S.I., K.C.
The Hon'ble Major-General C. H. Scott, C.B., R.A.
The Hon'ble Sir Harvey Adamson, Kt., C.S.I.
The Hon'ble Mr. J. O. Miller, C.S.I.
The Hon'ble Mr. W. L. Harvey, C.I.E.
The Hon'ble Sir G. F. Wilson, K.C.B., K.C.M.G.
The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.
The Hon'ble Mr. A. A. Apcar, C.S.I.
The Hon'ble Maung Bah-Too, C.I.E., K.S.M.
The Hon'ble Mr. W. W. Drew.
The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.
The Hon'ble Mr. W. R. H. Merk, C.S.I.
The Hon'ble Raja Sir Muhammad Ali Muhammad Khan, K.C.I.E., Khan Bahadur, of Mahmudabad.

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VI A

The Hon'ble Mr. N. C. Macleod.
The Hon'ble Mr. J. Andrew.
The Hon'ble Mr. Maneckjee Byramjee Dadabhoy.
The Hon'ble Mr. F. A. Slacke, C.S.I.
The Hon'ble Mr. J. M. Holms, C.S.I.

NEW MEMBER.

The Hon'ble Mr. Holms took his seat as an Additional Member of Council.

QUESTIONS AND ANSWERS.

The Hon'ble MR. DADABHOY asked :—

"In answer to a question put by Mr. G. M. Chitnavis in this Council on the 13th March last regarding an inquiry into the causes of the abnormal and general rise in prices of food-grains during the past few years, Government was pleased to give an assurance that the subject was under consideration, and that, in case an inquiry was found necessary, it would gladly consider his suggestion.

Will Government be pleased now to state if it has come to any final decision, and, if so, does it propose to make a full investigation into this most important subject?"

The Hon'ble SIR GUY FLEETWOOD WILSON replied :—

"The Government fully recognise the high importance of the rise in prices, and it is engaging their most careful attention. It is, however, a question of much complexity, involving a number of other issues of much moment; and the Government are not yet in a position to announce their final decision regarding the suggested enquiry. They trust that it will shortly be possible to give the Hon'ble Member further information on the subject."

The Hon'ble MR. DADABHOY asked :—

"In view of the doubts expressed in certain quarters about the introduction *en bloc* of the Reforms sketched out in the Secretary of State's despatch to this Government of 27th November last, will Government be pleased to state approximately the time when they will be carried out, and, further, for the satisfaction of the people, to use all possible expedition in their introduction?"

The Hon'ble SIR HARVEY ADAMSON replied :—

"The Government of India understand that a Bill legalising the reforms in question will be introduced in the next Session of Parliament. There can be no enlargement of the Legislative Councils until the Bill has passed into law. There is obviously a considerable amount of work yet to be done before the reforms can take practical effect, but the Government of India are anxious to lose no time, and they have already taken action to secure all possible expedition in the matter."

The Hon'ble MR. DADABHOY asked :—

"Will Government be pleased to consider the desirability of appointing trained lawyers as Judicial Commissioners and Additional Judicial Commissioners wherever such offices exist or may be created in future?"

The Hon'ble SIR HARVEY ADAMSON replied :—

"There is no obstacle to the appointment of trained lawyers as Judicial Commissioners and Additional Judicial Commissioners. Three such appointments have already been made, and the Governor General in Council will be prepared to make others as occasion may arise."

The Hon'ble MR. DADABHOY asked :—

"Is the Government aware that the imposition upon India of an additional burden of Rs. 45,00,000 in consequence of the decision of the Romer Committee, notwithstanding a vigorous protest from this Government, has caused widespread dissatisfaction in the country?"

The Hon'ble SIR GUY FLEETWOOD WILSON replied :—

"The Government of India have observed the comments of the Indian Press on the subject."

The Hon'ble MR. DADABHOY asked :—

"Will Government be pleased to state the grounds upon which this burden has been imposed, and to lay upon the table all papers relating thereto?"

The Hon'ble SIR GUY FLEETWOOD WILSON replied :—

"The capitation rate laid down by the Welby Commission was liable to revision at a subsequent date. The grounds upon which the extra charge was accepted by the Secretary of State were the increase since the calculation and introduction of the £7-10-0 capitation rate in :—first, the training period required ; secondly, the annual cost per man of recruits under training ; and thirdly, the percentage of annual drafts and reliefs to total establishment. As the Secretary of State has decided that it would not be in the public interest to present the papers to the House of Commons, they cannot be presented to this Council."

The Hon'ble MR. DADABHOY asked :—

"Has the Secretary of State for India finally sanctioned the additional expenditure in consultation with this Government?"

The Hon'ble SIR GUY FLEETWOOD WILSON replied :—

"The Secretary of State has agreed to the extra charge being paid from the 1st May 1908. He is in possession of the views of the Government of India."

The Hon'ble MR. DADABHOY asked :—

"Was the Report of the Romer Committee published either in India or in England before the sanction? If not, why not? Has it since been published?"

The Hon'ble SIR GUY FLEETWOOD WILSON replied :—

"The report of the Romer Committee has not been published, the Secretary of State having decided that its publication would not be in the public interest."

The Hon'ble MR. DADABHOY asked :—

"In sanctioning the extra contribution from India were the recommendations of the Welby Commission taken into account and considered?"

The Hon'ble SIR GUY FLEETWOOD WILSON replied :—

"The Welby Commission Report was before the Romer Committee."

The Hon'ble MR. DADABHOY asked :—

"Has a similar contribution been exacted from any of the British Colonies? If not, why this difference in treatment of different parts of the same Empire?"

The Hon'ble SIR GUY FLEETWOOD WILSON replied :—

" The Crown Colonies of Mauritius, Ceylon, Singapore and Hong-Kong contribute fixed percentages of their revenues towards the cost of their garrisons. All the most important Colonies, except those in South Africa, provide their own defence forces. Since the passing of the Statute 21 George III, c. 65, in 1781, India has been required to meet all charges for raising, transporting and maintaining the European troops which she employs."

The Hon'ble MR. DADABHOY asked :—

" Has the attention of Government been drawn to the remarks made by Mr. Saradacharan Mitra, late Judge of the Calcutta High Court, on the occasion of his retirement from the Bench, about the enormous growth of business of late years in the Calcutta High Court, the gross insufficiency in the number of Judges, and the consequent failure of justice ?

" If so, does Government propose to increase the number of Judges, with due regard to the claims of both branches of the legal profession and the Indian Civil Service ?

" Will Government be pleased to ascertain if similar unsatisfactory conditions prevail in any of the other High Courts ?"

The Hon'ble SIR HARVEY ADAMSON replied :—

" The Government of India have seen in the newspapers a report of the reply made by the Hon'ble Mr. Justice Mitra to the farewell address presented to him by the Vakils of the Calcutta High Court on the occasion of his retirement from the Bench of that Court.

" The Government of India have at present under their consideration the question of the strength of the Calcutta High Court.

" The Government of India have also under consideration a proposal recently made by the Government of Madras for the temporary strengthening of the Bench of the Madras High Court, with particular reference to the reduction of arrears of work in that Court. They have no reason to believe that any further additions to the strength of the Bench in the Bombay and Allahabad High Courts are necessary at present. In the year 1907 an additional Judge was appointed temporarily to the former Court, to deal with the extra work involved by the institution of a number of cases under the Land Acquisition Act. Early in 1908 the fifth Puisne Judgeship in the Allahabad High Court, which had hitherto been sanctioned as a temporary arrangement, was made permanent : and a sixth Puisne Judge was also appointed to the Court, on the understanding that the appointment should be absorbed on the occurrence of the first vacancy in the Court at the end of eight years."

INDIAN STEAM-SHIPS LAW AMENDMENT BILL.

The Hon'ble MR. HARVEY moved that the Bill further to amend the Inland Steam-vessels Act, 1884, and the Indian Steamships Act, 1884, be taken into consideration. He said :—"The provisions of this Bill have met with general approval and, as the Statement of Objects and Reasons fully explains the purpose which we had in view in framing the Bill, I need now only explain the two small amendments which I am proposing. The first amendment is intended to make it perfectly clear that clause 2 of the Bill will apply to motor-driven craft plying ordinarily on inland waters. Secondly, in the second sub-section of the new section 23 which, when clause 4 of the Bill becomes law, will be substituted for the existing section in the Indian Steamships Act, it is proposed to substitute the word 'substantially' for the word 'sufficiently,' this amendment being necessary to bring sub-section (2) of section 23 into line with sub-section (1) of the same section."

The motion was put and agreed to.

The Hon'ble MR. HARVEY moved that after the word "vessels" in the new section 68A of the Inland Steam-vessels Act, 1884, proposed to be inserted by clause 2 of the Bill, the words "which ordinarily ply on inland waters and are" be inserted.

The motion was put and agreed to.

The Hon'ble MR. HARVEY moved that for the word "sufficiently" in subsection (2) of the new section 23 of the Indian Steamships Act, 1884, proposed to be substituted by clause 4 of the Bill, the word "substantially" be substituted.

The motion was put and agreed to.

The Hon'ble MR. HARVEY moved that the Bill, as amended, be passed.

The motion was put and agreed to.

INDIAN PAPER CURRENCY (AMENDMENT) BILL.

The Hon'ble SIR GUY FLEETWOOD WILSON moved for leave to introduce a Bill to amend the Indian Paper Currency Act, 1905. He said :— "Hon'ble Members are in possession of the Bill itself, which cannot be held to be of a controversial character. I may explain that in 1903, when the present five-rupee currency note was introduced, it was made legal tender throughout British India with the exception of Burma. The measure which I now submit to Your Excellency's Council is intended to remove that exception. The reason why the great province of Burma was left outside the scope of the so-called 'universal' note in 1903 was purely a question of ways and means. The experiment of universal notes was a novel one; and we anticipated that they would, in the beginning at any rate, be used to a considerable extent as a means of private remittance, thus throwing upon Government a large potential liability to encash them at the different offices of issue throughout India. It was feared that this liability would be particularly heavy in Burma, owing to the great volume of the seasonal movement of trade between that province and Bengal. It was determined therefore to defer the extension of the universal five-rupee note to Burma until experience had been gained of the working of the change in India.

"Five years have passed since then, and we now feel that Burma should no longer be left out of the scheme. We have more information than we had in 1903 regarding the use of the five-rupee note for remittance purposes; and we are prepared, by certain financial dispositions with which I need not trouble the Council, to minimise whatever danger there is in that direction. We believe that the extension of the note to Burma will be welcomed by the business community of that province, and that it will tend to increase the popularity and usefulness of our note circulation.

"If the measure which I now submit becomes law, a new pattern of universal five-rupee note will be issued, bearing its denomination on the face of it in Burmese as well as in the other leading vernaculars of India; the issue of the present Burma note being discontinued."

The motion was put and agreed to.

The Hon'ble SIR GUY FLEETWOOD WILSON introduced the Bill.

The motion was put and agreed to.

The Hon'ble SIR GUY FLEETWOOD WILSON moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

The Council adjourned to Friday the 5th February 1909.

J. M. MACPHERSON,

*Secretary to the Government of India,
Legislative Department.*

CALCUTTA;

The 15th January 1909.



The Gazette of India.

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CALCUTTA, SATURDAY, FEBRUARY 6, 1909.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART VI.

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GOVERNMENT OF INDIA.
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1861 AND 1892 (24 & 25 VICT., C. 67,
AND 55 & 56 VICT., C. 14).

The Council met at Government House, Calcutta, on Friday, the 5th February, 1909.

P R E S E N T :

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.
His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M. G.C.M.G., G.C.I.E., Commander-in-Chief in India.
The Hon'ble Sir Erle Richards, K.C.S.I., K.C.
The Hon'ble Major-General C. H. Scott, C.B., R.A.
The Hon'ble Sir Harvey Adamson, Kt., C.S.I.
The Hon'ble Mr. J. O. Miller, C.S.I.
The Hon'ble Sir G. D. F. Wilson, K.C.B., K.C.M.G.
The Hon'ble Mr. A. A. Apcar, C.S.I.
The Hon'ble Maung Bah Too, C.I.E., K.S.M.
The Hon'ble Mr. W. W. Drew.
The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.
The Hon'ble Mr. W. R. H. Merk, C.S.I.
The Hon'ble Mr. N. C. Macleod.
The Hon'ble Mr. J. Andrew.

The Hon'ble Mr. Maneckjee Byramjee Dadabhoy.
 The Hon'ble Mr. F. A. Slacke, C.S.I.
 The Hon'ble Mr. J. M. Holms, C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble MR. DADABHOY asked:—

"Is it a fact that the Irrigation Commission of 1901-03 recommended a total expenditure on construction of 44 crores of rupees in twenty years, beginning from April 1905? Will the Government be pleased to state the total amount of actual expenditure on construction of irrigation works, major and minor, since April 1905? Does it fall short of the expenditure recommended by the Commission? If so, will Government, in making allotments for the next year, be pleased to make up the shortage of past years, besides providing for the full average annual expenditure recommended?"

The Hon'ble MR. MILLER replied:—

"The Irrigation Commission's forecast of expenditure on construction of major works was, as the Hon'ble Member states, 44 crores of rupees in twenty years. This estimate did not refer to works in Burma.

"The actual expenditure in construction corresponding to the forecast, that is, the expenditure on major works omitting Burma, has been:—

| | Lakhs. |
|------------------------------|--------|
| 1905-1906 | 115 |
| 1906-1907 | 160 |
| 1907-1908 | 178 |
| 1908-1909 (revised estimate) | 199 |

"The average expenditure under the forecast would be 220 lakhs a year. The actual expenditure therefore falls short of the forecast, and it has always been foreseen that it necessarily would do in the early part of the twenty years' period. As a matter of fact, what has happened is that the scope for productive public works has been found to be much greater than the Commission expected, and the expenditure on such works has been in excess of the forecast, while the expenditure on protective works has been much less. It would take too long to explain in detail why this has been the case in reply to a question, but I hope to return to the subject in connection with the Budget. I may, however, say that it would be out of the question to make up for the shortage of past years in making allotments for next year; the money could not be spent. All we can hope for is that the progressive approach which has since 1905 been made towards the Commission's forecast will be maintained in the coming year.

"As regards minor works the Commission made no definite forecast and no comparison is therefore possible. The greater part of this expenditure is under the control of Local Governments, and the total amounts to from 130 to 140 lakhs a year, including maintenance as well as construction charges."

The Hon'ble MR. DADABHOY asked:—

"In view of the remarks made by the Hon'ble Finance Member in the Financial Statement for 1906-07 about the Mahanadi Canal in the Raipur District, the admitted frequency of famines in the Central Provinces, and the utility of the project as a protective measure, will the Government, in making allotments for irrigation works for the year 1909-10, be pleased to consider the desirability of starting the work, and to make a substantial allotment for the purpose?"

"Is a scheme now ready for execution? If so, what time will be necessary for the completion of the work? How is the total estimated cost of 95 lakhs of rupees to be distributed over the period?"

The Hon'ble MR. MILLER replied :—

"The Government of India fully recognise the necessity for protective irrigation works in the part of the Central Provinces to which the Hon'ble Member refers, and a project for a canal to utilise the waters of the Mahanadi was drawn up some years ago. The Secretary of State, however, to whom it was referred, thought it desirable to have the data re-examined and further information collected before authorizing the expenditure of public funds on a work of this magnitude. In revising the project our Engineers have widened its scope, and have prepared a great scheme the total cost of which will be over two crores of rupees for utilizing the waters both of the Mahanadi and the Tendula rivers. The Government of India have been unable to accept the estimates of the Mahanadi part of this project as altogether satisfactory, but the other portion—the Tendula project—can be dealt with by itself. It appears to the advisers of the Government of India to be a promising scheme, and though not of equal protective value to the Mahanadi part of the project to offer many advantages in other respects.

"This scheme, the estimated cost of which is 95·73 lakhs, is, as far as the engineering details go, ready for execution. It has, however, to be approved of and sanctioned by the Secretary of State. The time allowed for completion of the project in the estimates is six years. I am unable to say how the cost will actually be distributed, but the scheme contemplates the expenditure of—

| | |
|-------|--------------------------|
| 12·11 | lakhs in the first year. |
| 18·82 | " " second " |
| 18·82 | " " third " |
| 18·73 | " " fourth " |
| 18·67 | " " fifth " |
| 8·58 | " " sixth " |

"As the scheme has not yet been sanctioned, it is impossible to hold out any hope of a substantial allotment for it in the budget of 1909-10."

The Hon'ble MR. DADABHOY asked :—

"Has the attention of Government been drawn to a Resolution of the Indian Industrial Conference held at Madras in December last, praying for the abolition of the countervailing duty upon cotton manufactured in India?"

"Is the Government aware that there is at present a general depression in the Indian cotton industry?"

"In view of these facts will Government be pleased to at least suspend the impost for a period, especially when it is not wanted for revenue purposes?"

The Hon'ble MR. MILLER replied —

"Government have received copies of the Resolutions passed at the last Indian Industrial Conference referred to by the Hon'ble Member. They are also aware that there is at present some depression in the Indian power-loom industry; but they have no reason to believe that this depression is in any way due to the excise duty of 3½ per cent. levied on cotton goods manufactured in Indian mills. Government cannot hold out any hope of action in the direction suggested by the Hon'ble Member."

The Hon'ble Mr. DADABHOY asked :—

"Has Government finally decided upon a scheme for the separation of judicial and executive functions in this country, on the lines laid down by the Hon'ble Home Member last March?"

"When will the reform be tentatively introduced into the two Bengals?"

The Hon'ble Sir HARVEY ADAMSON replied :—

"The reply to the first question is in the negative. The Government of India have referred to the Lieutenant-Governors of Bengal and Eastern Bengal

and Assam and the High Court of Calcutta proposals for introducing into selected districts of Bengal and Eastern Bengal and Assam, by way of experiment, a scheme for the separation of judicial and executive duties. When all the replies have been received, the scheme will be further examined by the Government of India and a reference will be made to the Secretary of State. It is impossible to say at present when final orders on the proposal will be passed."

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

" Will Government be pleased to state whether Kashmiris are eligible for military service as soldiers? If so, how many are on the active list as soldiers in the Indian Army? "

His Excellency THE COMMANDER-IN-CHIEF replied :—

" There is nothing to debar the enlistment of Kashmiris in the Indian Army, but as the class composition of units does not specifically include them, none are enlisted."

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

" Will Government be pleased to state whether Kashmiris residing and living in Amritsar and the borders of Kashmir are included in the definition of ' cultivators ' in the Punjab Alienation Bill? If not, will Government be pleased to state why not? "

The Hon'ble MR. MILLER replied :—

" The Hon'ble Member's question indicates some misapprehension as to the effect of the law relating to the alienation of land in the Punjab. The Punjab Land Alienation Act has never contained any definition of the term ' cultivator '. Under section 4 of the Act as amended in 1907, the Local Government is empowered to determine by notification what bodies of persons in any district or group of districts are to be deemed to be agricultural tribes or groups of agricultural tribes for the purposes of the Act. It is presumed that the object of the Hon'ble Member's question is to ascertain whether Kashmiris residing and living in Amritsar and the borders of Kashmir have been notified as an agricultural tribe. The notifications issued by the Local Government under section 4 of the Act have been examined. They do not include any tribes or groups of tribes described in the manner specified in the question. Applications from persons desirous of being notified as an agricultural tribe for the purposes of the Act should be submitted to the Local Government, which is empowered by the law to decide such questions without reference to the Government of India and to which a copy of the question and of this reply will be forwarded."

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

" Will Government be pleased to have prepared and placed on the Council Table, by as early a date as convenient, a statement showing the Commissions of enquiry instituted by Government, from that of the Police Commission up to that of the Decentralisation Commission, and the cost incurred in and on account of each such Commission? "

The Hon'ble SIR HARVEY ADAMSON replied :—

" A statement as desired by the Hon'ble Member is being prepared and will be placed on the table as soon as possible."

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

" Will Government be pleased to state at what stage the question is of the necessity of legislation in the matter of the Registration of Partnerships, advocated by the Bengal Chamber of Commerce some four years ago? "

The Hon'ble SIR HARVEY ADAMSON replied :—

"The following papers, copies of which have been placed on the table, explain how matters stand :—

1. Letter to the Bengal and Bombay Chambers of Commerce, Nos. 886-7, dated the 6th July 1908.
2. Letter from the Bombay Chamber of Commerce, No. 1016, dated the 14th September 1908.
3. Letter from the Bengal Chamber of Commerce, No. 1727, dated the 6th November 1908.
4. Letter to the Bengal and Bombay Chambers of Commerce, Nos. 33-4, dated the 6th January 1909."

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

"Will Government be pleased to state whether the attention of the Department of Commerce and Industry has been drawn to the comments in the issues of the *Truth* newspaper of the 21st October and 4th November last, regarding the Anglo-Indo-European Trading Society, Limited, whose aim and object have been declared by the Secretary to be of 'a patriotic and political move against Anglo-Indian despotism and oppression'. If so, is the company registered in India?"

The Hon'ble MR. MILLER replied :—

"Government have seen the comments in the issues of the *Truth* newspaper of the 21st October and the 4th November last, regarding the Indo-European Trading Society, Limited, to which the Hon'ble Member refers. It appears from those comments that the Society is registered in England under the Industrial and Provident Societies Act, 1893 (56 & 57 Vict., c. 39). So far as Government is aware, the Society has not been registered as a Company in India."

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

"Has the notice of Government been drawn to the comments of the Press in India as to the necessity of legislation to check and control the formation of commercial and industrial undertakings with little or no capital, the chief aim and object of which really is the formation of bogus companies for the benefit and advantage of company promoters?"

The Hon'ble MR. MILLER replied :—

"Government have observed certain comments of the Press in India regarding the alleged formation of bogus companies for the benefit and advantage of company promoters."

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

"Will Government be pleased to take early steps for the consideration of such legislative measures as may help to the encouragement and formation of healthy and stable commercial and industrial undertakings in India?"

The Hon'ble MR. MILLER replied :—

"The consolidation of the various English Companies Acts is now engaging the attention of His Majesty's Government. When the result of their action is known the Government of India propose to consider what improvements are necessary in the Indian Companies Act."

The Hon'ble MR. DADABHOY, on behalf of the Hon'ble SIR KHWAJA SALIMULLA, asked :—

"Will Government be pleased to state whether any of the Trade Associations or Chambers of Commerce of the country have memorialised against the

introduction and establishment of the value payable parcel post with England, and, if so, which of them, and what action has been taken by Government on such memorial or memorials ? ”

The Hon'ble Mr. MILLER replied :—

“ All the Trades Associations and Chambers of Commerce were asked for their views on the scheme proposed by the British Post Office for the introduction of a ‘ cash-on-delivery ’ parcel service between India and the United Kingdom. The replies which have been received show that the Trades Associations are unanimously opposed to the scheme. The Bombay and Bengal National Chambers of Commerce have expressed opinions adverse to the proposal, and it is understood that the Upper India Chamber of Commerce, whose reply has not been forwarded by the Government of the United Provinces, is also opposed to it.

“ After full consideration, the Government of India have informed the Secretary of State that they do not wish to participate in the scheme.”

PRESIDENCY-TOWNS INSOLVENCY BILL.

The Hon'ble SIR ERLE RICHARDS : “ My Lord, in the Report of the Select Committee on the Presidency-towns Insolvency Bill, which I now have the honour to present, there will be found a detailed statement of the amendments which are recommended to this Council. But I think it will be convenient if I call attention on this occasion to the principal points which arise on the report.

“ On the whole the Bill has been well received. The representatives of the commercial communities who are specially affected by it, or at least the greater part of them, are in favour of its being passed into law forthwith. The Bengal Chamber of Commerce and the Calcutta Trades Association, the Chambers of Commerce of Bombay and of Rangoon, all approve. The Madras Chamber of Commerce take objection to a point of jurisdiction which is, we think, sufficiently met by the amendments we propose. The National Chamber of Commerce of Bengal have expressed the opinion that the working of the Bill would be expensive and we have inserted provisions to meet this point also.

“ On the legal aspect of the Bill we have received valuable criticisms from the Courts who will have to administer it. The High Court of Madras and the Chief Court of Lower Burma are in favour of it. The High Court of Calcutta have made a number of suggestions which we have accepted almost in their entirety. The amendments proposed by the High Court of Bombay have also been generally adopted. The only objection taken to the Bill as a whole is one put forward by the latter High Court on the ground of the inability of the Indian Legislature to deal sufficiently with the matter of insolvency : a point to which I referred on a former occasion and on which I will say a word or two presently.

“ The general effect of the amendments we have introduced is to bring the Bill more into line with existing practice. For instance the Bill as introduced provided that adjudication should be made only after service of the petition on the debtor ; we recommend that the present practice should be preserved and that orders of adjudication should be made *ex parte* unless the Court otherwise directs. Under the Bill an adjudication order operated of itself to release a debtor from jail ; we recommend that the present practice should be preserved and that debtors should not be released on adjudication but should be required to apply to the Court, as now, for a protection order. In the Bill the first meeting of creditors was compulsory ; this was a new provision and was in our opinion too great a departure from the existing procedure. We recommend that such meetings should be held only in those cases in which the Court, on the application of a creditor or of an official assignee, should so direct. Under the Bill it was contemplated that the Court should have the power to commit all offenders for trial before a Magistrate. We think it desirable that the present insolvency practice should be preserved, and that while the Court should itself try insolvents charged with offences under the Act, insolvents and other persons charged with offences under the Penal Code

should be dealt with under the ordinary criminal procedure. We think that the procedure to be followed before the Court in trials for offences under the Act should be set out in the Bill.

"The other amendments are set out in the Report and it is not necessary to call attention to them now. There remains the point to which reference has been made as to the power of this Council to legislate in such a way as to give sufficient powers to official assignees to collect the assets of debtors which are outside British India, and to give sufficient effect outside British India to discharges granted by the Courts here. This subject is fully discussed in a note by our Hon'ble Colleague Mr. Macleod, the official assignee of Bombay, which is appended to the Report. There can be no doubt that under an Imperial Act, such as the one now in force, greater powers can be given to an official assignee and greater effect can be given to a discharge than is possible under an Indian Act; for an Imperial Statute operates throughout the British dominions, while an Indian Act can only operate in British India. But if the effect of an adjudication order under the present Act is compared with the effect of an adjudication order under this Bill, if it becomes law, it will in my opinion be found that the advantages of an Imperial Statute are of small practical value. I will not weary this Council with a disquisition which must be somewhat technical but I will content myself with pointing out that under section 118 of the English Statute of 1883, which in this respect has effect throughout the British Empire, every British Court acting in insolvency is bound to give effect to the orders of every other British Court in insolvency matters. It follows that vesting orders of Indian Courts made under an Indian Act would be given effect to by British Courts in all parts of the Empire even though they had not force of themselves without the endorsement of those Courts. The section has been proved effective by experience in regard to colonial bankruptcies. No difficulty has arisen in those cases in collecting the assets of a bankrupt beyond the jurisdiction of the Court by which he is adjudicated, at least, no complaint that I know of has been made on that ground, and I venture to think that the section will be found sufficient to enable an Indian official assignee to collect the assets of an Indian insolvent in the same way. The effect of it has, perhaps, been insufficiently considered in these discussions, and the Committee deem it advisable to call the attention of Courts to it by an express reference in the Bill. Clause 126, as amended by us, enacts that Indian Courts shall do what is necessary to give effect to section 118 of the English Act, and though, in strictness, such a provision may be superfluous, it will at least be a convenient reminder of the effect of the Imperial Act. I am not without hopes that a further consideration of this aspect of the question may lead those who have felt pressed by this objection to modify the views which they previously entertained. The Committee recommend that Parliament should be asked to pass a validating Act, that is to say, an Act to put vesting orders and discharges of the Indian Courts in the same position under the Bill, if it is passed into law, as under the existing Act. It is at least a fair proposal that the present position should be maintained in England. But they are unanimously of opinion that the Bill should be enacted, irrespective of that legislation, because they are convinced that the advantages to be gained under it will altogether outweigh any advantage which is to be obtained only by Imperial legislation, and, apart from that, no one can contemplate with equanimity the postponement of all reform in this branch of the law until such time as Parliament should choose to legislate for us.

"I desire, my Lord, in conclusion to express the thanks of the Committee to the Hon'ble Mr. Justice Fletcher of the High Court of Calcutta, who has been good enough to give us much valuable advice during our deliberations."

INDIAN PAPER CURRENCY (AMENDMENT) BILL.

The Hon'ble SIR GUY FLEETWOOD WILSON moved that the Bill to amend the Indian Paper Currency Act, 1905, be taken into consideration. He said:—"Hon'ble Members will recollect that this measure is intended to make our five-rupee currency note legal tender and encashable in Burma as well as

in the rest of India. The Bill has been published, I may mention, in all the local Gazettes including Burma, and no criticisms or objections have been received. It is a measure about which there can, I think, be no controversy, and there seems therefore no necessity to ask the Council to refer it to a Select Committee."

The Hon'ble MAUNG BAH TOO said :— "My Lord, I have much pleasure in supporting the Hon'ble Sir Guy Fleetwood Wilson's Bill. The adoption of the said Bill would confer a great boon on the travelling public and others. Great difficulty is experienced in changing notes of one circle in another, and now since the issue of gold sovereigns has been curtailed the travelling public and others find that they have to carry rupees to avoid the above-mentioned difficulty. But this has always been found to be bulky and inconvenient. In conclusion, may I be allowed to add that Burma herself will feel highly gratified to find that she will in future be enjoying the same privileges in this matter of five-rupee notes as her sister Provinces in India."

The motion was put and agreed to.

The Hon'ble SIR GUY FLEETWOOD WILSON moved that the Bill be passed.

The motion was put and agreed to.

WHIPPING (AMENDMENT) BILL.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill further to amend the Whipping Act, 1864, and the Code of Criminal Procedure, 1898, be referred to a Select Committee consisting of the Hon'ble Sir Erle Richards, the Hon'ble Mr. Drew, the Hon'ble the Maharaja of Darbhanga, the Hon'ble Sir Muhammad Ali Khan of Mahmudabad, and the mover.

The motion was put and agreed to.

The Council adjourned to Friday, the 26th February 1909.

J. M. MACPHERSON,
*Secretary to the Government of India,
Legislative Department.*

CALCUTTA ;
The 5th February 1909. }

To be substituted for corresponding pages of Gazette of 27th February, 1909.



The Gazette of India.

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART VI.

Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS
UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS,
1861 AND 1892 (24 & 25 VICT., C. 67,
AND 55 & 56 VICT., C. 14).

The Council met at Government House, Calcutta, on Friday, the 26th February,
1909.

P R E S E N T :

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy
and Governor General of India, *presiding*.
His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M.,
G.C.M.G., G.C.I.E., Commander-in-Chief in India.
The Hon'ble Sir H. Erle Richards, K.C.S.I., K.C.
The Hon'ble Major-General C. H. Scott, C.B., R.A.
The Hon'ble Sir Harvey Adamson, Kt., C.S.I.
The Hon'ble Mr. J. O. Miller, C.S.I.
The Hon'ble Mr. W. L. Harvey, C.I.E.
The Hon'ble Sir G. D. F. Wilson, K.C.B., K.C.M.G.
The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.
The Hon'ble Mr. A. A. Apcar, C.S.I.
The Hon'ble Nawab Bahadur Sir Khwaja Salimulla of Dacca, K.C.S.
The Hon'ble Maung Bah Too, C.I.E., K.S.M.
The Hon'ble Mr. W. W. Drew.
The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.

The Hon'ble Raja Sir Muhammad Ali Muhammad Khan, K.C.I.E., Khan Bahadur, of Mahmudabad.
 The Hon'ble Mr. N. C. Macleod.
 The Hon'ble Mr. J. Andrew.
 The Hon'ble Mr. Maneckjee Byramjee Dadabhoy.
 The Hon'ble Mr. F. A. Slacke, C.S.I.
 The Hon'ble Mr. J. M. Holms, C.S.I.

QUESTION AND ANSWER.

The Hon'ble MR. DADABHOY asked :—

"IN view of the demand for a local Legislative Council by 'advanced public opinion in the Central Provinces', the need felt by the Hon'ble the Chief Commissioner for the 'assistance and support of public expression of views on public affairs', as stated in paragraph 28 of his note on the Government of India's Reform Proposals, forwarded with his letter No. 1285-1-15-2 of 18th June, 1908, and the final abandonment by the Secretary of State of the general proposal for the creation of Advisory Councils and the consequential non-adoption of the special scheme recommended for the Central Provinces by the Hon'ble the Chief Commissioner for securing such 'assistance and support', will the Government, in working out the details of the Reform Scheme, be pleased, in consultation with the Hon'ble the Chief Commissioner, to consider the desirability of creating for the Central Provinces and Berar or for the Central Provinces only a local Legislative Council, without raising the Administration into the status of a Lieutenant-Governorship, in exercise of the extensive powers conferred by section 46 of the Indian Councils Act of 1861?"

The Hon'ble SIR HARVEY ADAMSON replied :—

"In connection with the Reform Scheme now under consideration, the Government of India do not at present contemplate the establishment of a Legislative Council for either the Central Provinces and Berar or the Central Provinces alone."

The Hon'ble MR. DADABHOY asked :—

"Will Government be pleased to state the present amounts of the Gold Standard Reserve and the Paper Currency Reserve? Has either of these Reserves been depleted during the current financial year, and, if so, to what extent, and under what circumstances?"

The Hon'ble SIR G. F. WILSON replied :—

"The amount of the Gold Standard Reserve on the 15th instant was £18,417,833; of which £5,978,899 was held in gold or sterling securities in England, and the balance in rupees in India. Its composition has been altered by the substitution of rupees for gold to the extent of the sterling bills sold on London in 1908, but the Reserve has not been depleted during the current financial year, except to the extent of a temporary loan for general purposes, which it is intended to repay before the 31st of March.

"The amount of the Paper Currency Reserve on the 15th instant was Rs 41,37,07,715; of which £2,865,970 was held in gold and sterling securities and the balance in rupees, silver bullion and rupee securities. This Reserve has not been depleted during the current financial year. It has been maintained, as required by law, at the equivalent of the amount of currency notes in circulation."

The Hon'ble MR. DADABHOY asked :—

"Is it true that imports of sugar from Austria-Hungary have more than doubled during the current year, as compared with the figures of the last year? Is this abnormal increase due to any special advantage enjoyed by the manufacturers of that country?"

The Hon'ble MR. HARVEY replied :—

"Imports of beet sugar into India from Austria-Hungary during the last five calendar years have been as follows :—

| | Cwt. |
|------|-----------|
| 1904 | 1,384,851 |
| 1905 | 1,122,342 |
| 1906 | 2,623,639 |
| 1907 | 1,001,075 |
| 1908 | 1,437,214 |

"It appears from these figures that the recent increase in the imports of sugar from Austria-Hungary indicates not a departure from the normal, but a reversion towards it after a year of exceptionally small arrivals. There is no reason to believe that the increase referred to by the Hon'ble Member is due to any special advantages enjoyed by sugar manufacturers in Austria-Hungary."

The Hon'ble NAWAB SAIYAD MUHAMMAD asked :—

"Will the Government be pleased to lay on the table a list of Muhammadan religious and charitable endowments and trusts which are at present under the management of Government in different Provinces?"

The Hon'ble SIR HARVEY ADAMSON replied :—

"The information asked for by the Hon'ble Member is not immediately available, but the Government of India will ask Local Governments and Administrations to supply it and a list will then be placed on the table."

The Hon'ble SIR KHWAJA SALIMULLA asked :—

"Has the attention of the Government of India been drawn to the reply sent by Nawab Syed Ameer Hosain Bahadur, C.I.E., to the Circular letter No. 2497-A of 7th July last of the Government of Bengal, on the scheme contemplated by the Government of India as laid down in paragraph 4 of its letter No. 611 of 27th March last, regarding the separation of the judicial and executive functions of district officers?"

"Will Government be pleased to cause to be placed on the Council table copies of this reply for the information of the Members?"

"Will Government be pleased to direct that copies of this reply be forwarded to the Government of Eastern Bengal and Assam, to the High Courts, and to such other bodies to whom this question is under reference as mentioned by Hon'ble Sir Harvey Adamson in his reply to the Hon'ble Mr. Dadabhoy at the meeting of the Council held on the 5th instant?"

The Hon'ble SIR HARVEY ADAMSON replied :—

"The Government of India have received from the Bengal Government a copy of the letter in question. As the matter to which the letter relates is still under discussion it would be premature to publish the papers, and the Government see no reason for treating this letter exceptionally either by laying it on the table or by communicating it to the authorities mentioned by the Hon'ble Member."

The Hon'ble SIR KHWAJA SALIMULLA asked :—

"Is it a fact that the experiment of the separation of the two functions, commenced and brought into operation by the Government of Mysore since October 1907, has not given satisfaction and has not proved a success?"

"That the Dewan has, in the Mysore Representative Assembly, declared that the Government was not prepared to further extend the experiment?"

"That the Judges of the Chief Court of Mysore have declared that the experiment of the separation of the two functions has retarded the prompt disposal of Civil Court work?"

The Hon'ble SIR HARVEY ADAMSON replied:—

"In 1907 the Amildars of Kolar, Hassan, Maddagiri, Hole-Narsipur and Sagar in the Mysore State were relieved of their magisterial functions and the Munsifs at those stations were invested with the powers of Magistrates of the second class. The Amildars of Bangalore and Mysore were also instructed not to exercise their magisterial powers, and their magisterial duties were assigned to the respective City Magistrates.

"In October 1908 the Dewan of Mysore, in addressing the Mysore Representative Assembly, remarked:—'The experiment has worked well so far as it has gone, but any further extension of its scope appears likely to entail additional expenditure and has on that account to be deferred for the present.' The Government of India have no further information regarding the working of the experiment and have no record of any pronouncement on the subject by the Chief Court of Mysore."

The Hon'ble SIR KHWAJA SALIMULLA asked:—

"Will Government be pleased to direct the Political Agents of Mysore, Baroda and such other Native States where the experiment has been brought into force, to report whether any appreciable benefit has arisen, or is likely to arise, to the masses from this separation."

The Hon'ble SIR HARVEY ADAMSON replied:—

"The Government will ask for reports upon the exact nature of the changes that have been made and upon their effect, including the points mentioned by the Hon'ble Member."

THE WHIPPING (AMENDMENT) BILL.

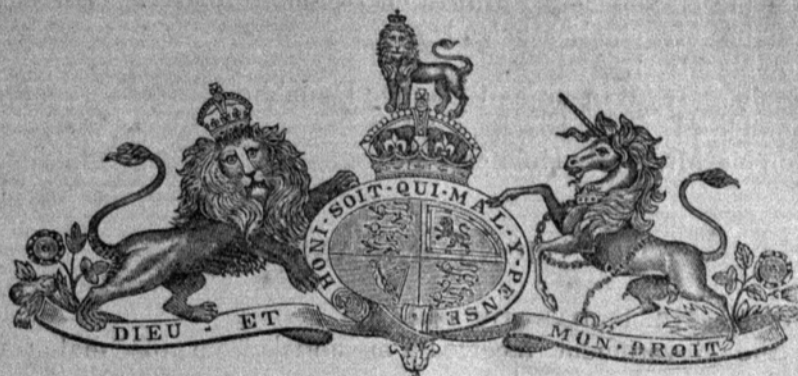
The Hon'ble SIR HARVEY ADAMSON presented the Report of the Select Committee on the Bill further to amend the Whipping Act, 1864, and the Code of Criminal Procedure, 1898. He said:—"The principal alteration effected by the Select Committee is the consolidating of the laws relating to the punishment of whipping. There is nothing that I need add to the Report except a word of explanation regarding two amendments which have the effect of still further restricting the infliction of whipping on juveniles. These amendments have been inserted in fulfilment of a promise given by the Secretary of State in Parliament. The first excludes juveniles from whipping for certain specified offences against the State and of a seditious nature. It is, I may observe, much in accordance with existing practice, for, so far as I have been able to ascertain, no juvenile offender has ever in the past been whipped for a seditious offence. The second provides that for offences outside the Indian Penal Code punishable with imprisonment, whipping may be inflicted on juveniles only in respect of such offences as may be notified by the Governor General in Council in this behalf. As the law stands at present the Governor General in Council notifies the exclusions. Under the Bill as amended he will notify the inclusions."

The Council adjourned to Friday, the 12th March 1909.

J. M. MACPHERSON,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;

The 26th February, 1909. }



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PART VI.

Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

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1861 AND 1892 (24 & 25 VICT., C. 67,
AND 55 & 56 VICT., C. 14).

The Council met at Government House, Calcutta, on Friday, the 12th March 1909.

P R E S E N T :

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*
His Honour Sir Edward Norman Baker, K.C.S.I., Lieutenant-Governor of Bengal.
His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., G.C.I.E., Commander-in-Chief in India.
The Hon'ble Sir H. Erle Richards, K.C.S.I., K.C.
The Hon'ble Sir Harvey Adamson, Kt., C.S.I.
The Hon'ble Mr. J. O. Miller, C.S.I.
The Hon'ble Mr. W. L. Harvey, C.I.E.
The Hon'ble Sir G. D. F. Wilson, K.C.B., K.C.M.G.
The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.
The Hon'ble Mr. A. A. Apcar, C.S.I.
The Hon'ble Nawab Bahadur Sir Khwaja Salimulla of Dacca, K.C.S.I.
The Hon'ble Maung Bah Too, K.S.M.

The Hon'ble Mr. W. W. Drew.
 The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.
 The Hon'ble Mr. N. C. Macleod.
 The Hon'ble Mr. J. Andrew.
 The Hon'ble Mr. Maneckjee Byramjee Dadabhoy.
 The Hon'ble Mr. F. A. Slacke, C.S.I.
 The Hon'ble Mr. J. M. Holmes, C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble MR. DADABHOY asked :—

"Has the Government received a memorial from the malguzars of the Central Provinces, praying for longer period settlements and more moderate assessments? If so, has the matter been decided? In view of the generally impoverished condition of the malguzars and the successive famines, will the Government be pleased, in consultation with the Hon'ble the Chief Commissioner, to provide at the forthcoming renewal for thirty-year settlements, and to allow the malguzars a higher percentage of profits than in previous settlements?"

The Hon'ble MR. MILLER replied :—

"The memorial referred to by the Hon'ble Member has not yet reached the Government of India.

"The Government have no reason to believe that the malguzars generally are in an impoverished condition. The Central Provinces have suffered severely from famines, but the effect of these famines was carefully watched in the districts affected, and liberal measures of relief were adopted where necessary. In some districts a considerable abatement of the land-revenue demand accompanied by a reduction of rent was given, while in other districts the existing settlement term was prolonged and re-settlement operations postponed until the tracts had fully recovered from the effects of the famine. Any representations that may be submitted through the Chief Commissioner on the subjects mentioned in the last part of the question will be fully considered. The Government of India are not prepared without such consideration to give any such pledge as the Hon'ble Member asks for."

The Hon'ble MR. DADABHOY asked :—

"Is the Government aware that in the Central Provinces the Government Treasuries do not afford facilities for the exchange of the currency notes of different circles? In view of the steady commercial progress and the advancement of the people of the Central Provinces during the past few years, and particularly the great inconvenience experienced by the numerous Coal and Manganese Companies, Mills, Factories and Trading Associations, will the Government be pleased to establish either a Paper Currency Office or a Currency Exchange in Nagpur in order to afford greater facilities for commercial operations?"

The Hon'ble SIR G. F. WILSON replied :—

"Government have already under consideration measures to improve the system of its note circulation and hope that Nagpur in common with other internal centres of trade will benefit by the changes made."

The Hon'ble MR. DADABHOY asked :—

"Is it a fact that the gross receipts from Railway earnings have fallen off this year to the extent of nearly three crores of rupees, and the working expenses have increased by a crore-and-a-half? If so, will these facts be taken into consideration in making allotment for Capital Expenditure on Railways during 1909-1910?"

The Hon'ble MR. HARVEY replied :—

" The gross receipts from Railway earnings have fallen off this year to the extent of about 109 lakhs below the actuals of the past year, and the working expenses have increased by 204 lakhs over the actuals of the past year.

" The amount of Capital to be expended in any year on Railways is not fixed with immediate reference to the results of working of the previous year."

The Hon'ble MR. DADABHOY asked :—

" Will Government be pleased to enlighten the public on the causes to which the fall in the one case and the rise in the other can respectively be ascribed?"

The Hon'ble MR. HARVEY replied :—

" The causes of the falling off in receipts and the increase in expenses will as usual be fully explained in the Financial Statements and in the Memorandum by the Railway Board on Railway working for the year which will shortly be laid before Council and published in the Gazette of India. Briefly it may be said that the decrease in Revenue is due to general depression in trade and to local famine conditions. The increase in working expenses is due principally to larger renewals of Permanent Way and Rolling-stock, repairs of extraordinary flood damages, scarcity allowances to staff, abnormal empty running resulting from abnormal trade conditions, and increased cost of coal."

The Hon'ble MR. DADABHOY asked :—

" Has the attention of Government been drawn to an article published in *Indian Engineering* of 2nd January last, condemning in strong terms the treatment of third class passengers on Indian railways, especially the following passages :—

' The whole treatment of third class passengers throughout the country is indefensible in any serious reckoning of railway responsibilities It is not so much in the station latrines and lavatories, but in the cars that humanity is sometimes outraged.

' Notwithstanding the provisions of what is known as the "Sardines section" of the Railway Act, which distinctly prohibits huddling, not only are passengers permitted to stuff compartments beyond their assigned accommodation, but railway officials have often been known, and can always be seen, to thrust passengers into well-filled carriages to their own manifest suffering and that of others already penned in.'

" Do the evils pointed out in the article exist? If so, what action does Government propose to take for their prevention?"

The Hon'ble MR. HARVEY replied :—

" The article in *Indian Engineering* from which three extracts have been quoted on the question has been read.

" Crowding in trains does and must occasionally occur in this as in other countries, especially at times of festivals or other large public concentrations.

" Railway Administrations are fully aware of their responsibilities in this matter, and Government have no reason to doubt that every reasonable endeavour is made by them to deal efficiently with the passenger traffic offering at all times, and Government Inspectors have instructions to pay special attention to the conditions under which third class passengers are carried on the various railways.

" Moreover, the principal Railway Administrations have spent during the past few years, and are still spending, large sums of money in building third class carriages of an improved (bogie) type, which add considerably to the comfort of the Indian passenger. In the circumstances Government do not propose to take any further special action in the matter."

The Hon'ble MR. GOKHALE asked :—

" HAVE the Government of India received from the wife of Babu Ashwini Kumar Dutt of Barisal, one of the nine Bengalee gentlemen recently deported, a memorial drawing the attention of the Government to the report that her husband is seriously ill and praying for his restoration to home and liberty?"

Is it a fact that Babu Ashwini Kumar Dutt is seriously ill?

Are the Government now in a position to state how long they propose to keep Ashwini Babu as also the other deportees under restraint?"

The Hon'ble SIR HARVEY ADAMSON replied:—

"The Government of India have received the memorial mentioned in the question. It is not a fact that Babu Ashwini Kumar Dutt is seriously ill. On the 4th March the Medical Officer in charge of the jail in which this State prisoner is confined reported that his health has continued to be very good and that he has gone up in weight since he was received in the jail.

"The Government are unable to make any statement regarding the release of the State prisoners."

PRESIDENCY-TOWNS INSOLVENCY BILL.

The Hon'ble SIR ERLE RICHARDS moved that the Report of the Select Committee on the Bill to amend the Law of Insolvency in the Presidency-towns and in the Town of Rangoon be taken into consideration.

The motion was put and agreed to.

The Hon'ble SIR ERLE RICHARDS moved that the Bill, as amended, be passed.

The Hon'ble MR. DADABHOY said:—"My Lord, I desire to say a few words today as I had the privilege of serving on the Select Committee, and had the good fortune of being associated with the Hon'ble the Law Member in the preparation of this important measure, though I must confess I have played an insignificant part. The Committee had the expert advice and guidance of the Hon'ble Mr. Macleod, whose extensive knowledge of the practical working of the English Statute in an important commercial city like Bombay was of immense service to us; we had, besides, the inestimable advantage of the erudition and skill of the Hon'ble Law Member whose exactitude and precision in drafting are unrivalled, and but for whose masterly grasp of the varied and complicated details of the English Bankruptcy Act we should not have been in a position to present so complete and self-contained a Bill to this Council.

"This Bill is one of the most important measures of legislation undertaken by this Council for many a year, and I have no hesitation in congratulating the public, especially the commercial public, of this rising Empire with an expanding trade on their being given a suitable and workable Insolvency Act. The Bill is of a highly technical nature and the most gratifying feature of it is that many difficulties have been overcome and complexities have been simplified, and the public will now have an Act in no way less complete and comprehensive than the English Bankruptcy Act. I have great pleasure in supporting the revised Bill which now embodies the numerous useful suggestions made by the several High Courts and influential commercial bodies and organisations. The amended Bill ought to be received favourably by the public, as the provisions are suitable and framed in the light of the experience gained by the working of the old Act during a long series of years.

"But, my Lord, though I support this Bill, I confess it is with some degree of reluctance that I have become party to the substitution of an Indian Act for an Imperial Statute. In my opinion, so far as the Presidency-towns are concerned, it is necessary and expedient that the Insolvency Law should be an Imperial Statute. It is very desirable that the law for the administration of property of insolvent debtors in Presidency-towns should be passed directly by the Imperial Parliament. But for the proverbial apathy and indifference of the House of Commons for any legislation affecting India, this Council should never have undertaken the preparation of this Bill. Indian interests and vital questions affecting the political and commercial affairs of this vast and growing Dependency, unfortunately, trouble very little English statesmen. This apathy is a regrettable feature of English Parliamentary life. The Indian law, as embodied in the Act of 1848, is on the same lines as the English Acts before 1869, which were

superseded by the Bankruptcy Code of 1869, which in its turn was substituted by the more comprehensive and elastic Act of 1883. The present law is thus behind the times by half-a-century, and though admittedly ineffective and out-of-date it is surprising that the task of supplying a suitable law was not till very recently undertaken. Sir James Stephen's Bill of 1870 was withdrawn, because it was too ambitious in its scope, and was intended to apply to the whole of India. Sir Courtenay Ilbert's attempt in 1886 to give a comprehensive Act to India proved abortive, because the Select Committee to which it was referred was of opinion that it was too complicated to suit Indian conditions, but was neither willing to suggest modifications nor to undertake the preparation of a suitable Bill. It was then shelved till last March, and, my Lord, it is due to your incentive and the general animation pervading Your Excellency's administration that this difficult measure, which the Imperial Parliament has so long neglected, has again come up on the tapis, and has assumed a shape which ought to command general assent.

"But, my Lord, as pointed out above, the proposed legislation might be open to objection from one point of view. An Indian Act is, after all, going to be substituted for an Imperial Statute. That is not merely a sentimental objection; it is one founded in reason. It is a matter of no small importance that a discharge granted by Courts in India should operate as a conclusive discharge in respect of all debts provable in the insolvency proceedings in this country; for instance, a debt contracted in England should be fully covered by an order of discharge passed by an Indian High Court. Again the sea-borne trade of a city like Bombay is fast expanding, and Bombay traders enter into direct commercial relations not only with merchants doing business in England, but also in Mauritius, Africa, Penang, Shanghai, Hongkong and other distant ports, and the Bill now before this Council will not be as effective in its operation for the purpose of securing for the official assignee immoveable and other valuable property of insolvents situated in other parts of the British possessions as the present Imperial Statute. A vesting order made under the Act of 1848 now in force immediately vests in the official assignee by direct operation the whole of the property and effects of the insolvent in whatever part of His Majesty's extensive dominions they may be situate or accrue; and likewise a discharge made under that Act takes effect in every part of the British Empire. In the Statement of Objects and Reasons of the Bill it is remarked that the advantages conferred by the Act of 1848 are of *no real value*, since experience has shown that in practically every case in which there are assets in both countries concurrent proceedings are instituted in England and India. The Hon'ble Member in charge of the Bill, in presenting the Report of the Select Committee, also stated to this Council that on comparison of the effect of an adjudication order under the Act of 1848 with the effect of an adjudication order under the Bill the advantages of an Imperial Statute would appear to be of small practical value. I hope my Hon'ble friend will bear with me if I am not able to wholly reconcile myself to that view. The advantages of having an Imperial Act are obvious, and cannot be gainsaid; and though it is true that in many cases concurrent proceedings are promptly instituted in England and in this country, I venture to assert that the official assignee in this country is in a distinctly more favourable and unassailable position by reason of his drawing his authority from an Imperial Statute than if he were merely deriving his power to act under a Statute of the local legislature, which is necessarily limited in its operation to British India only. The present Bill when passed into law will certainly bring about some inconvenient results in so far as the immoveable property of insolvents situate outside the limits of British India is concerned. It will be difficult to get at the assets of foreign merchants trading in India and investing in real property outside British India; likewise debts, securities, and mortgages due to the insolvents outside British India will not be very easily approachable as under the present Act. An insolvent again, obtaining his discharge in any Presidency-town, will be liable to constant and vexatious persecutions outside British India. The valuable provision of the present Act whereby the vesting order *ipso facto* operates as a statutory transfer of immoveable property within any

part of the British Empire is lost in the Bill under discussion. Henceforward the official assignee will have to call in the aid of section 118 of the Bankruptcy Act for an order which would make the Indian vesting order effective as regards immoveable property lying outside the limits of British India, provided the vesting order purports to deal with such assets; but even in that case his title must date from the order made by the Bankruptcy Court and abundant opportunities will thus be afforded to a dishonest insolvent to dispose of his property in the interval. We must, however, accept this Bill as practical men, and make a virtue of necessity. We must be content to forego the advantages of the present Act in view of the somewhat extensive application of section 118 of the English Bankruptcy Act of 1883; and in order to gain the end more effectively, we have incorporated section 126 with the object of declaring all British Courts exercising Insolvency jurisdiction to be auxiliary to one another. Section 126 of the Bill is thus not a wholly inadequate set-off against the distinct and important advantages that we are going to lose by the repeal of the Act of 1848. My Lord, to be fair, I must state that it is not a case of absolute disadvantage or loss. The Bill under discussion has some distinct merits which the old antiquated Imperial Act does not possess. It is decidedly an improvement on that Act. It is modelled on the present English Law of Bankruptcy; it removes disabilities and defects; it provides a more effective and suitable machinery for compelling insolvent debtors to make a full disclosure of their assets and liabilities, and complete and drastic means for reaching and recovering property improperly concealed or disposed of by them. Creditors have been given not only a voice in the preliminary investigation, but have also been given extensive rights of putting debtors into Court before the assets have been made away with, and are, further, associated in the management and distribution of the assets. Moreover, means have been provided for the recovery without serious trouble of the insolvent debtor's property collusively and fraudulently held by third parties, and the official assignee has been invested with powers relating to the conduct of the insolvent and the administration of his property which must inure to the benefit of all parties. The official assignee will thus be every way in a more advantageous position under the present measure than under the Act of 1848, while any possible misuse of the larger powers and privileges by that official is effectively guarded against by the limitations requiring him to act in the light of day and in the presence of the general body of creditors. The provisions in the Bill about composition mark a distinct advance. Proposals for composition must be circulated among the creditors, and after they have been considered by the official assignee, it will not be open, as in the existing Act, to a small number of recalcitrant creditors to disturb the arrangement, and to dictate their own terms. Under the Bill the voice of the majority will prevail. In short, the Bill offers ample protection to an honest insolvent who has come into trouble through the vicissitudes of fortune, at the same time that it places in the hands of the Court necessary means for the prompt and effective punishment of dishonest adventurers. The language is clear, and judges and lawyers will have less difficulty in interpreting and administering the law. The Bill is decidedly less cumbrous and verbose than the existing Act. The underlying principle is different. Unlike the Act of 1848, the Bill aims at the protection of the interests of creditors, whereas the principal function of that Act has been to relieve insolvent debtors and to leave honest creditors at their mercy.

"The Bill may therefore be safely passed into law, and left to work out its own destiny. Meanwhile, I shall, in common with the Hon'ble Law Member and many of my colleagues, cherish the hope that the Imperial Parliament will see its way in the near future to pass an enabling Act for the extension of the scope and operation of the Indian Act."

The Hon'ble MR. MACLEOD said:—"My Lord, for nearly forty years the question of amending the law relating to Insolvency in India has been more or less under the consideration of Government. It has been generally admitted that the law required amendment, but the difficulties in the way have been of an extremely intricate and technical character. This subject must naturally be of the

greatest importance to the commercial community, and it is due to my learned and Hon'ble friend the Law Member that all obstacles have been removed and that the persistent demand for reform has at last been satisfied.

"The first step was to provide the Mufassal with a simplified form of Insolvency Law. That was effected by the passing of the Provincial Insolvency Act, 1907, and it then became imperative that the Insolvency Law in the Presidency-towns and Rangoon should be brought up to date. Accordingly, this Bill was introduced and has now reached its final stage before the Council. Shortly, it is based on the English Bankruptcy Acts of 1883 and 1890, adapted with the greatest possible consideration for the special conditions which exist in India. The administration of the English Bankruptcy Law has recently been subjected to an exhaustive enquiry before a Special Committee appointed by the Board of Trade, and the report of the Committee forms a striking testimony to the general efficiency of those Acts. The Committee reported that the evidence and documents placed before them did not disclose any dissatisfaction on the part of the commercial community with the main features of the existing law and procedure; the matters of complaint and suggestions for reform of the law with which they had to deal had principally related to special incidents of the law and branches of its administration.

"It cannot be said that any great changes in the existing law are recommended, but the Select Committee have carefully considered that report and have incorporated in the Bill such few of the suggestions for reform as appeared suitable to Indian conditions.

"Since that report was published, the Right Hon'ble President of the Board of Trade was waited on by a deputation representing the Association of Chambers of Commerce and the Association of Trades Protection Societies, which asked for the introduction of a Bill to amend the existing Bankruptcy Law. As far as I can gather from the newspaper report, the deputation had only four principal points to urge. Two are provided for by the Bill before this Council, the other two were comparatively unimportant and impracticable to adopt as regards India. At any rate this would go to prove that the commercial community in England can find but few suggestions to make for the improvement of the English Acts on which this Bill is based.

"In the note which I was allowed to annex to the report of the Select Committee I have dealt in detail with the advantages which will be secured by passing the Bill, but there are one or two points which I should like to emphasise more clearly. The present Act is entitled an Act for the Relief of Insolvent Debtors. Creditors receive very little consideration. Some people think they are not entitled to much. The Right Hon'ble President of the Board of Trade, when replying to the deputation I have just referred to, is reported to have said: 'The creditor in bankruptcy is not a public benefactor. The mere fact of his being a creditor shows that he has been guilty of misplaced confidence. He has made an error of judgment and is not so much entitled to state protection as some people claim. If he has lost by unsuccessful trading, he must reap the result of his own act.' If that view were correct no one would give credit for fear of making bad debts, then there would be no insolvency, neither would there be any trade.

"The real point is that when an order of adjudication is made against a debtor either on his own or on a creditor's petition, his creditors are deprived of the ordinary remedies which otherwise the law would have allowed them to pursue, and have to depend on the Insolvency Laws to protect their interests. Under such circumstances, it is the duty of Government not only in the interests of creditors but also of the whole community to provide the Courts and their officers with the necessary powers to exercise complete control over the conduct and affairs of insolvent debtors. In this respect the Act of 1848 is lamentably deficient.

"For while the provisions for the discovery of an insolvent's property are inadequate, the burden of proving misconduct and opposing an insolvent's application for discharge is thrown entirely on the creditors. The official assignee

is merely a collector of assets, he has neither the right nor the means to intervene. I attach the very greatest importance to the reform it is proposed to effect by the Bill with regard to these two points.

"As to the first, it is proposed to give the Courts the widest possible powers to compel the discovery and production of an insolvent's property. This may not always prevent the successful concealment of property, but legislation can go no further.

"As to the second point, clause 79 provides that the duties of an official assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate. It will be the duty of the official assignee to report to the Court on the conduct of every insolvent who applies for his discharge. The official assignee's report will be *prima facie* evidence of the statements contained therein and the onus will lie on the insolvent to rebut them. Even if an insolvent declines to apply for his discharge, the Court can direct the official assignee to report in any case in which he is of opinion that an offence under the Act has been committed.

"The result will be that offences under the Insolvency Law will no longer pass unnoticed. At the hearing of applications for discharge the time of the Court will be saved, and a serious burden on creditors will be removed.

"On the other hand, while the conduct of each insolvent will be officially scrutinized, the procedure whereby a man who has become insolvent through no fault of his own can get an absolute discharge has been very much simplified. Such an insolvent will be able to get protection for his after-acquired property as easily as he can now get protection for his person only. The present law regarding after-acquired property may in many cases work very harshly. Few insolvents go to the trouble and expense of a second hearing to get absolute protection for their property, and even then, if judgment has been already entered up, their property is never safe from execution. The Bill provides that judgment cannot be entered up against an insolvent unless one or more of certain facts have been proved against him. Another great improvement will be effected by enabling insolvency proceedings to be taken by or against a firm in the name of the firm. My Lord, however much care is exercised in framing a measure dealing with insolvency, it is inevitable that complaints will always be forthcoming from persons who suffer from the pecuniary misfortunes of those with whom they deal. Delays in realising insolvents' property must occur, opportunities for the successful concealment of assets will exist, and the administration of insolvent estates must be accompanied by a certain amount of formality and expense, but I am in hopes that this Bill will enable insolvency administration to be far more efficient than it can ever be under the present Act.

"No doubt cases will occur in which a vesting order or an order of discharge will not have so far-reaching an effect as under the Act of 1848. This can be remedied by an Imperial Act, but I have endeavoured in the note referred to above to show that the advantages to debtors as well as creditors to be obtained under the Bill altogether outweigh any loss that may be entailed by the repeal of the present Act. The loss is problematical, the advantages are real. The Hon'ble Mr. Dadabhoy is afraid that the official assignee will not be in such an advantageous position as he is now when seeking to recover assets outside British India. I do not share his fears. I claim that all the points raised by the Hon'ble Member have been met by my note. My experience in the case of assets situate in Hong Kong or in any of the other British Colonies referred to by the Hon'ble Member is that almost invariably the domicile of the insolvent is Indian and the assets are moveable, so that the Indian vesting order will for all practical purposes operate in such cases as efficiently as hitherto.

"The official assignee must always be at a disadvantage if he has to take proceedings which he cannot personally superintend in a Foreign Court. One must assume, however, that the general principles of private international law will be recognized by other British Courts and due effect given to section 118 of the English Bankruptcy Act of 1883. I do not anticipate therefore that the official assignee, if he has to seek the assistance of such Courts, will be in any worse position than he is now.

"But I should also like to point out that it is just in those cases that we are brought in contact with Insolvency Law in other parts of the British Empire and that the disadvantages of the Indian Insolvency Law not being in line with that law are most apparent. Moreover, it is taking a very narrow view of the subject to rivet the attention to what may happen in a particular case. Rather we should consider whether the old or the new legislation is the most efficient and best answers the requirements of the community.

"My Lord, I may claim to have had considerable experience in the actual working of the present Act, and during the last few months I have had ample opportunities of testing this question from every point of view. I am satisfied that in passing this Bill we shall be effecting a very necessary and long called for reform."

The Hon'ble SIR ERLE RICHARDS said :—"The Council have heard the speeches of my two Hon'ble Colleagues, and their opinions are, I submit, a sufficient warrant for this motion. The Hon'ble Mr. Macleod speaks with wide practical experience gained as Official Assignee of Bombay; he knows the defects of the existing law and is confident that this Bill will effect a valuable reform. My Hon'ble and learned friend Mr. Dadabhoy, a lawyer of experience, joins in commending the Bill and points out that it has received the assent of the commercial communities of India.

"The Hon'ble Mr. Dadabhoy devoted some portion of his speech to a point which has been discussed in this Council on more than one previous occasion, as to the disadvantages of giving up the Imperial Statute from which our present law of insolvency derives its authority. The Hon'ble and learned Member is enamoured of this Bill, but he cannot quite make up his mind to break with the past: he is on with the new love, but he is not completely off with the old. He is anxious that this Bill should step into the Statute-book, but he views with regret the departure of the present Act which it must displace. This question has been examined in detail in the Report of the Select Committee and in the papers appended to that Report. We may differ as to the exact degree of loss we must suffer from the fact that vesting orders and discharges under Indian insolvencies will no longer, if this Bill be passed into law, have the same effect of themselves outside British India; but we are all united, and as my Hon'ble and learned friend says, all practical men must be united in recognising that, whatever these disadvantages may amount to, the advantages to be gained by the substitution of the new law over the present out-of-date enactment, altogether outweigh them. Therefore I ask this Council to carry this motion unconditionally and to pass this Bill without reference to the possibility of obtaining an Imperial Act to supplement it. At the same time, my Lord, I desire to state on behalf of the Government of India that they have carefully considered the argument in favour of having an Imperial Statute and that they are prepared to request the Secretary of State to consider the matter, and if he be so advised to ask the Imperial Parliament to pass a short Bill to give effect to Indian vesting orders and discharges in the British Empire outside India. That is the position under the present Act and it is only fair, as it seems to us, that we should be put in the same position under this Bill. It may be said that an Act of this Council will have the same effect as the Bankruptcy Acts of other Colonial Legislatures, and that we cannot fairly claim to be in a better position than other parts of the British dominions. But our answer to that is that in India we are already in a more favourable position and that we are only asking Parliament to maintain the existing position. We do not ask them to enact a new Act for us, that would be unreasonable; but we do ask them to give the Act which we are about to pass the same effect as the present law has. We hope that we shall succeed in our request but we hold that this Bill, even if it be not supplemented by Imperial legislation, will effect a marked improvement in the law, and we recommend you to enact it independently of that consideration.

"During the past few days I have received petitions from various Associations representing vakils and pleaders asking that the Bill may be amended in order to give them a right of audience in insolvency matters, a right which they do not at present possess. Changes of this kind, my Lord, are not easy to make; they involve interference with vested

interests and at best they cannot be made at the eleventh hour; they require the fullest consideration. The Bill provides for the maintenance of the existing state of things, and I think the Council will be wise to adhere to that.

"My Lord, I have little more to say. The lot of a Legal Member in this Council is a hard one; it is almost always his duty to speak on measures of a character so technical that it is impossible to invest them with any general interest. During the past few years we have passed Acts in this Council dealing with the subjects of Civil Procedure, Provincial Insolvency, the Limitation of Actions and the Registration of Documents. These are all matters of legal importance, but they are none of them subjects on which it is possible to arouse general enthusiasm. Today, the last occasion on which I shall have the honour of addressing this Council, my task is even worse, and I confess that it is beyond my powers to discuss the provisions of this Bill in such a way as to make it of interest to my Colleagues. I content myself with claiming for it that it will effect an important and much-needed alteration of the law. It is in the interests of the State that commercial transactions should be maintained at a high level of honesty, and that the law should give sufficient powers to prevent fraudulent trading. The Bill will do much to accomplish this object, and it is for that reason that I ask the Council to pass it into law."

The motion was put and agreed to.

THE AMENDING (ARMY) BILL.

His Excellency THE COMMANDER-IN-CHIEF moved for leave to introduce a Bill to amend certain enactments relating to the Army. He said:—"The Amending (Army) Bill I have the honour to propose to introduce is of an entirely formal character rendered necessary by recent changes in the ranks and designations of Generals Commanding in India. Advantage has however, been taken of the introduction of this Bill to remedy certain defects in our military laws:

- (1) regulating the admission of soldier lunatics to asylums;
- (2) giving power to the Commanding Officers of Volunteer Corps to remove the names of those members who have become non-effective from the roll of their corps; and
- (3) affording better control over the sale and supply of spirituous liquors or intoxicating drugs in cantonments.

"These three amendments to the law have been dealt with in the Statement of Objects and Reasons attached to the Bill."

The motion was put and agreed to.

His Excellency THE COMMANDER-IN-CHIEF introduced the Bill.

His Excellency THE COMMANDER-IN-CHIEF moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in English in the Gazette of India and in the local official Gazettes.

The motion was put and agreed to.

The Council adjourned to Monday, the 22nd March 1909.

J. M. MACPHERSON,

Secretary to the Government of India,

Legislative Department.

CALCUTTA;

The 12th March 1909.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 27, 1909.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART VI.

Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS
UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS,
1861 AND 1892 (24 & 25 VICT., C. 67,
AND 55 & 56 VICT., C. 14).

The Council met at Government House, Calcutta, on Monday, the 22nd March 1909.

P R E S E N T :

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.
His Honour Sir Edward Norman Baker, K.C.S.I., Lieutenant-Governor of Bengal.
His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., G.C.I.E., Commander-in-Chief in India.
The Hon'ble Sir H. Erle Richards, K.C.S.I., K.C.
The Hon'ble Major-General C. H. Scott, C.B., R.A.
The Hon'ble Sir Harvey Adamson, Kt., C.S.I.
The Hon'ble Mr. J. O. Miller, C.S.I.
The Hon'ble Mr. W. L. Harvey, C.I.E.
The Hon'ble Sir G. D. F. Wilson, K.C.B., K.C.M.G.
The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.
The Hon'ble Mr. A. A. Apcar, C.S.I.
The Hon'ble Nawab Bahadur Sir Khwaja Salimulla of Dacca, K.C.S.I.
The Hon'ble Maung Bah Too, C.I.E., K.S.M.
The Hon'ble Mr. W. W. Drew.
The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.

The Hon'ble Raja Sir Muhammad Ali Muhammad Khan, K.C.I.E., Khan Bahadur, of Mahmudabad.

The Hon'ble Mr. N. C. Macleod.

The Hon'ble Mr. J. Andrew.

The Hon'ble Mr. Maneckjee Byramjee Dadabhoy.

The Hon'ble Mr. F. A. Slacke, C.S.I.

The Hon'ble Mr. J. M. Holms, C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble SIR KHWAJA SALIMULLA asked :—

"Will the Government be pleased to have a statement prepared showing the number of permanent Muhammadan assistants (as distinct from copyists and typists) out of the total number of assistants in each of the Secretariat offices of the Government of India, with their pay and date of appointment, detailing separately those appointed after passing the competitive clerical examination and those appointed by pure nomination."

The Hon'ble SIR HARVEY ADAMSON replied :—

"The statement asked for by the Hon'ble Member is laid upon the Table*."

The Hon'ble SIR KHWAJA SALIMULLA asked :—

"Will Government also be pleased to say whether, under the rules framed in 1888 and modified from time to time for the recruitment of men for the Secretariat offices, some of the departments are entitled to recruit entirely by nomination and others are required to fill in one-half or two-thirds of the vacancies in that manner, and the remainder from among the passed candidates? If so, how many Muhammadans (as distinct from copyists and typists) have been appointed by pure nomination in comparison with the total number of appointments made in this manner during the same period?"

The Hon'ble SIR HARVEY ADAMSON replied :—

"Under the rules at present in force for the recruitment of clerks in the majority of the Government of India Secretariat offices two-thirds of the appointments in the lower division are filled by open competition and one-third by nomination. In the Army Department and Military Supply Department one-third are filled by open competition and two-thirds by nomination, and in the Foreign Department all vacancies are filled by nomination. Appointments in the upper division are filled by promotion of clerks from the lower division or by nomination. A statement† is laid upon the table showing the number of Muhammadans who have been appointed by pure nomination since 1888, as compared with the total number of appointments made in this way."

FINANCIAL STATEMENT FOR 1909-1910.

The Hon'ble SIR GUY FLEETWOOD WILSON introduced the Financial Statement for 1909-1910. He said :—"In accordance with the practice of recent years, I propose to lay on the table the Financial Statement for 1909-1910, and to explain in a few sentences its salient features.

"The year which is now coming to a close has been an unfortunate one. It began with famine in the United Provinces, and the adjoining areas of the Punjab, Central India and the Central Provinces, as well as in scattered parts of Bombay, Bengal and Madras. Although the autumn rainfall was on the whole sufficient, distress lingered in places, and has recently become acute again in Behar. The harvests fell short of expectation, and the people in Northern India suffered severely during the latter half of 1908 from an exceptionally violent epidemic of malarial fever. Trade did as badly as agriculture. Exports fell off very seriously in sympathy with the shortage in the harvests. Prices remained high; and imports continued to pour into markets which were already glutted. The balance of trade set sharply against India, and exchange dropped to gold

* *Vide* Appendix I.

† *Vide* Appendix II.

point, at which it was maintained only by Government selling sterling bills on London for five months continuously, and to the extent of £8 millions.

"The combined effects of famine, high prices and bad trade affected our finances very adversely. Our net Railway revenue fell short of the Budget by 551 lakhs. Land Revenue brought in 40 lakhs less, and direct famine relief cost 20 lakhs more, than had been provided. Compensation to low-paid Government servants for the dearness of food cost us nearly 90 lakhs, and high prices also enhanced the expenditure for food and forage in the Military estimates.

"Other unforeseen charges which had to be met were 19 lakhs for the Mohmand Expedition, 41 lakhs in extra payment to the War Office as the outcome of Lord Romer's Committee, and 11 lakhs for the improved scale of pay for the Indian Army which were introduced on the 1st January last. The whole of these additional Military burdens however were met by economies in the Military grants. We found unexpected assistance also in heavy receipts from Opium, which took the form chiefly of advance payments on the Malwa product in order to ensure priority of shipment against the restriction of exports which we are now enforcing.

"The not result of the year's finance is a deficit of no less than £3,720,500. It is the first deficit which our Indian budgets have shown since 1897-1898. It has imposed a great strain upon our cash balances, and it has turned the scale against the more ambitious programme of capital expenditure which we had hoped to be able to undertake next year.

"For the coming year, 1909-1910, the estimates have been framed with the closest regard to economy, and disclose a very small surplus of £230,900. This result has been reached without adding in any way to the taxation of the country.

"It assumes a return, though probably a slow return, to moderate prosperity, both in agriculture and trade; and it has necessitated the rejection of all expenditure which can reasonably be postponed or disallowed. I will not weary the Council with the detailed figures, which are given at length in the Statement.

"We propose to finance a capital programme of 15 crores for Railways and 1½ crores for Productive Irrigation works. It is our intention, subject to the usual reservations, to borrow 2½ crores in India; and the £6 millions of India bills which mature during the year in England will be renewed. The Secretary of State's drawings are taken at £16,200,000; but additional bills will be sold, so far as may be, should trade require them.

"It is to me a matter of genuine personal regret that, after the long series of prosperity budgets which my predecessors have unfolded, it should fall to my lot to record a year of marked financial depression, and to prepare a budget which involves a sharp curtailment of expenditure. I can only express a hope that the characteristic vitality of the Indian revenues will again assert itself, and prove our estimate to err if anything on the side of caution."

WHIPPING BILL.

The Hon'ble SIR HARVEY ADAMSON moved that the Report of the Select Committee on the Bill further to amend the Whipping Act, 1864, and the Code of Criminal Procedure, 1898, be taken into consideration.

The motion was put and agreed to.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill to consolidate and amend the law relating to the punishment of whipping be passed.

The Hon'ble MR. DADABHOY said:—"My Lord, my excuse in interposing in this debate is the extreme importance of the subject. I feel I am in a position to speak with some authority on account of my fairly long experience at the Bar. I have had opportunities of closely watching the working of the Whipping Act during a long series of years, and my observations are mostly grounded upon personal knowledge.

"The Statement of Objects and Reasons does not enlighten this Council on the circumstances under which the amendment of the Whipping Act has

been undertaken by Government. It only expresses the desire of Government to amend the law relating to whipping so as to restrict the group of offences for which that punishment might be inflicted and to limit the number of officials empowered to award it. The distinguished and respected Home Member in charge of the Bill, in asking leave to introduce it, only stated that in the progress of ideas the infliction of whipping as a form of judicial punishment had come to be regarded by the general public with ever-increasing disfavour, and that the object of the Bill was to mitigate the severity of flogging as a punishment and to bring the Whipping Act into line with the public opinion of the present day. It is not alleged that the Act as it stands is not humane or that there is anything specially revolting in the punishment of whipping.

"My Lord, I am not enamoured of the Bill in its present form. If the only excuse for undertaking this legislation is that whipping is extremely degrading and not suited to civilized times, that it is revolting to personal feelings and is absolutely in disfavour with the general public, there ought to be a policy of greater resolution and firmness than the one which has now been adopted. If whipping as a form of punishment is in disfavour as revolting to humanity, why not altogether abolish it from the Statute-book of our country? If, on the other hand, the working of the Act for nearly half-a-century has proved its justification and the desirability of its application to the conditions of Indian life, why do away with that salutary form of punishment merely because it does not meet with the approval of a section of public opinion which is swayed too much by abstract considerations of humanity in disregard of administrative necessity?

"As the Hon'ble Home Member has pointed out that whipping as a judicial punishment has come to be regarded with ever-increasing disfavour, and that is apparently the only justification for undertaking this legislation, I crave Your Excellency's indulgence to review briefly the history of whipping legislation in this country with the object of proving that that form of punishment has always been regarded with disfavour by the general public; what is more, it has not had on all occasions unqualified official support. The majority of those who had anything to do with the legislation of 1864 had not much to say in its favour, while that distinguished body, the Law Commissioners, expressed themselves strongly against the measure. I need not refer to the dictums from time to time pronounced by Indian Judges of the Calcutta High Court, that according to native Indian sentiment whipping is a worse form of degrading and hardening punishment than imprisonment, and that the sentence of whipping once it is passed is calculated to do irreparable mischief; once administered it cannot be undone; the conviction may be reversed, but the injury cannot be repaired.

"It is well known that corporal punishment was one of the authorized modes of punishment in the Criminal Law of this country in the past. From its early history this form of punishment was in vogue throughout the whole of India; the Bombay and Madras Presidencies had it even during the East India Company's time and almost till the end of 1861. Lord William Bentinck, that just and sympathetic Viceroy, took upon himself the noble task of abolishing that form of punishment in Bengal in the year 1834 by Regulation II of that year; and that memorable Regulation did away with corporal punishment and urged in its stead the introduction of a better and more effective system of prison discipline as a deterrent against crimes. The Committee of Prison Discipline that was appointed two years later to make a full and careful investigation into the matter, after over two years' labour, in finally submitting its report, suggested many essential reforms and improvements. Some of them were ultimately carried out, but the object contemplated by Lord William Bentinck was not achieved. This was clear from the preamble of Act III of 1844, which re-introduced corporal punishment in the Bengal Presidency, and subsequently extended it from time to time into all the dominions acquired by Government. This re-introduction of corporal punishment was justified, as appears from the preamble of that Act, because in the matter of prison discipline improvements had not been effected. It was deemed expedient to provide flogging for certain offences. This state of things continued till May 1861 when

the Indian Penal Code came into operation. It is noteworthy that though corporal punishment was abolished in Bengal in 1834, the Penal Code which embodied so completely the Criminal Law of the country did not provide whipping as a form of punishment. The draft Code was laid before the Governor General in Council as far back as 1837, but was not passed into law until nearly 25 years later. The distinguished Law Commission which was entrusted with the task of preparing the Code expressed its opinion on the subject of flogging in the Chapter on punishments in the following terms:—'We have not thought it desirable to place flogging in the list of punishments. Being satisfied that the punishment of flogging can be proper only in a few cases, and not being satisfied that it is necessary in any, we are unwilling to advise the Government to retrace its steps and to re-establish throughout the British territories a practice which by a policy unquestionably humane and by no means proved to have been injudicious, has recently been abolished through a large part of those territories.' It was in this spirit and in language so emphatic that corporal punishment was entirely eliminated from the Indian Penal Code. For upwards of two decades the Code remained incomplete and unpassed. It was not until 1855 that it was referred to a Select Committee for a thorough overhaul and careful revision. The Select Committee, however, adopted a view contrary to the Law Commission and recommended, besides other modifications, that whipping should be included in the list of punishments authorized by the Code. Subsequently, when the Code came up for consideration before the Supreme Council, it was decided to invite the opinions of local officers and public bodies on the subject, particularly as the draft Code did not contain or include the punishment of flogging. It was deemed inexpedient to delay any further the passing of the Code, but simultaneously a Select Committee was appointed to fully consider the question, and to report on the desirability of providing flogging as a form of punishment in a separate Bill, supplementary to the Penal Code. As the result of their recommendation a Bill was drafted, introduced and discussed in Council, and passed on the 7th September 1861, but it failed to obtain the assent of Lord Canning, the Viceroy and Governor General of India. Lord Canning did not withhold his assent because he doubted the soundness, or disapproved, of the principle of flogging, but because the Act teemed with many and serious defects in important details. The Act was not only vague, but failed to furnish a guide to Courts of Law; particularly, as there was no guarantee for the exercise of safe and judicious medical supervision.

"Lord Canning on the 5th February 1862 took the opportunity of giving his reasons for withholding his assent to the Bill of 1861. A new Bill was then introduced by Sir Cecil Beadon, the then Lieutenant-Governor of Bengal, on lines more acceptable to Lord Canning, on the 26th February 1862, but that Council suspended its sittings for legislative purposes some time in April of that year, before the preliminary stages could be got through. In November of the same year, when the Council re-met, the Government of India thought it expedient to call for reports from Local Governments on the effect of the absence of corporal punishment from the Penal Code. I do not intend going into the details of the reports that were received from the various Local Governments. Suffice it to say, all Local Governments expressed a very strong opinion on the subject, and advised on grounds of necessity the retention of that form of punishment. It was pointed out that during the year 1862 nearly 20,000 persons had been committed to jail for various terms of imprisonment for offences for which they might have been flogged and discharged. The Select Committee in charge of the Bill of 1862, in view of the strong opinions expressed by the various Local Administrations about the necessity of the retention of whipping as a form of punishment, the attitude taken by Lord Canning, the then condition of the country, and the defective system of Jail administration, came to the conclusion that a Bill embodying suitable provisions was necessary, nay, indispensable. It accordingly prepared a Bill providing corporal punishment in a form which subsequently became the Act of 1864, the general whipping law of India.

"My Lord, from what I have stated above it is perfectly clear that there has been neither uniformity nor consistency in the policy of this Government

with reference to whipping legislation. At one period corporal punishment was condemned as ineffective for the prevention of crime, degrading to culprits, branding them as it did with marks of infamy and doing them irreparable injury on account of the permanent stain inseparably connected with that form of punishment, and as it had the tendency to prevent the return of the culprit to an honest course of life; it was condemned as not being in consonance with the principles of enlightened legislation, incompatible with the rules of civilization, and shocking and brutalizing in scenic effect, as also for the firm and well-established opinion that, instead of reclaiming offenders, it not infrequently drowns them in the abyss of moral turpitude and degradation. I have shewn above that corporal punishment remained actually abolished from 1834 to 1837, and that the opinion of the Law Commissioners was given after a long experience of that form of punishment and nearly after four years' experience of the effect of its abolition. It was partially re-introduced in the year 1844; subsequently, during the Mutiny, when prisons were broken open and destroyed, the limitations which had been placed on that form of punishment had to be temporarily suspended; later on, it was incorporated in the draft of the Indian Penal Code only to be excised from it during consideration. Mr. Harrington's Flogging Bill did not linger long but died a speedy death, and Sir Cecil Beadon's Bill, which subsequently became the law of 1864, made a great change and incorporated corporal punishment permanently and finally in the Criminal Law of this country. It was very properly remarked by Sir Charles Trevelyan that 'there has been a see-saw legislation on the subject adapted to the circumstances of the times'.

"My Lord, I have not been able to gauge the reasons or to ascertain the policy that have led the Government to embark now upon this legislation in its present form. I have read the opinions expressed by several High Courts and District Officers, many of whom speak with their intimate acquaintance with the subject. Their observations, wherever founded on experience, are entitled to serious consideration. I find that the general body of official opinion is opposed to the amendments contemplated in the Bill. My Lord, though my personal feelings are against any system of corporal punishment, I must state that the present law has a deterrent effect on *old* and *habitual* offenders. I need not be reminded that a hardened criminal makes light of the prospect of flogging; that is ordinarily the case to be sure. But I have known of many cases where the criminals have begged for a commutation of sentence and for a further term of imprisonment in lieu of flogging. It is true that on the general question of penal whipping, there have been and there always will be divergent opinions; there are two sides to the question, one the practical and the other sentimental. Some people frankly appreciate its deterrent effect, the good results it yields, the suitability of the punishment in certain cases in lieu of imprisonment, and the economy from a State point of view, and admit that slight physical pain is preferable to months and years of undesirable incarceration in jail and association with hardened criminals. There are others again who see nothing but the degradation pure and simple, the deterioration in the moral tone, the indelible infamy, the gross moral turpitude and the physical suffering. Unfortunately the right point of view is not always taken. We fail to consider the nature of the man, and what is best calculated to bring him round. On proof of guilt we ought to consider what will be best for him, what will prevent him from repeating the act and persisting in his former evil course, and what punishment will best serve to protect society from similar offences. I hope I shall be pardoned if I venture to say that the present solicitude of the Government of India for the criminal classes is entirely misplaced. It is giving way too much to sentimental objections, and rather unduly restricting the operation of the Whipping Act. It is true that in England at the present time the force of public opinion has practically abolished the punishment of whipping, but it would be hardly correct to compare England with India where there is not much of healthy public opinion and social refinement, both being confined to educated classes and the professions. Philanthropists, proceeding only upon *à priori* reasoning, in season and out of season, decry the degrading and demoralizing effect of whipping on society, especially on the criminals undergoing flogging. But

experience shows it has a wholesome effect upon some criminals, and a decidedly deterrent effect upon juvenile offenders.

"My Lord, I gravely doubt if whipping is altogether wrong on principle. In determining the question of the comparative effects of whipping and imprisonment the fact must not be lost sight of that the jail of the present day is not an inconvenient place to live in for a class of habitual offenders. These usually belong to the lowest classes. Jail life to them is comparatively more comfortable, the food provided is decidedly better than what they are accustomed to, the most scrupulous care is bestowed upon their health, and sanitary and labour regulations are based on an approved and enlightened principle. Much as I detest the system of flogging I am afraid further restrictions upon whipping will remove in certain cases almost the only form of punishment which is regarded with some degree of fear by habitual and professional convicts. I would not be surprised if, as the result, crime against property would increase. I am not aware, neither has the Hon'ble Home Member informed us, if there has been any general abuse of the powers under the Whipping Act during the last few years. If my memory does not fail me, I believe the punishment of whipping is not even at present freely inflicted. I have also no hesitation in stating that as far as I am aware no recognized or well-informed public opinion is opposed to the infliction of such punishment on old and confirmed offenders. I have never heard it said that subordinate Magistrates as a class freely award this punishment; but rather it is the experience of many that they shrink slightly, if not too much, from resorting to this method of punishment. I have often heard Divisional and District Magistrates complain that the jails are crowded with undesirable people who could have been discharged with a few stripes. I think any one with any knowledge of our jail system is bound to admit that, except for the educated and the respected classes, prison life is not so trying or distasteful as it might on abstract considerations be supposed to be, and that to the average convict of the lower class imprisonment is not a punishment, but practically a small inconvenience; if life in jail does not offer him greater comforts and smaller hours of labour than life outside it, at any rate the jail affords him a shelter and saves him from starvation. Imprisonment alone does not sufficiently deter the criminal from committing serious offences against person and property, and I must confess I am not wholly in favour of the Bill as amended by the Select Committee. In my opinion the country has not yet attained to such a state of advancement and refinement as to entirely or in a great measure render unnecessary the retention of whipping as a judicial punishment. I cannot blink the fact that the Bill when it becomes law will remove in some cases a very effective deterrent, practically the only deterrent in the present low state of the depressed classes, both materially and morally. My Lord, I am fully prepared to admit that the amendments now embodied in the Bill are justifiable on grounds of humanity in so far as they narrow the groups of offences for which the punishment of whipping should be awarded and place the power of whipping in the hands of a more limited number of officials. Admitting as I do that, I cannot shake off the conviction that the proposed changes will materially weaken the arm of the law without appreciably ameliorating the system of punishments. It is an open secret that the present amendment is the outcome of representations by men, doubtless estimable and philanthropic, but a bit too much influenced in their opinions by general ethical principles, and apt to overlook the condition of the society to which criminals belong.

"My Lord, I beg I should not be misunderstood. I welcome just, reasonable and salutary restrictions on the Whipping Act; I am not averse to a reasonable and judicious curtailment of powers. In my observations about the desirability of whipping as a judicial punishment I have only the criminal classes in view. They do not apply to the case of the unhappy men who have perchance got into trouble in a Criminal Court. Their case is entirely different, deserving of the utmost care and consideration. All I deprecate is the abolition of the punishment for some of the heinous offences. It has not been shewn that the Whipping Act has been misused to any appreciable extent, and proper data have not been placed before this Council for a correct judgment as to the

propriety of the deletion of some of the salutary provisions. I warmly appreciate the motives of Government in undertaking legislation on the subject, impelled as it obviously is by a just and humanitarian desire to mitigate the severity of the existing law by curtailing the scope of its operation and placing the administration of it in the hands of senior and capable officials who may be expected to be possessed of larger experience and greater knowledge of the condition of the people. I am not opposed to the Bill in so far as it tends to mitigate the severity of the existing Statute. I shall welcome the day when whipping is wholly abolished, not only in England, but also in this country. I am fully aware that if any branch of the Criminal Law deserves the best and serious consideration of Government, it is the Whipping Act, as the people here are by nature sensitive and sentimental, and by tradition and habit disposed to look upon with horror and abhorrence on this form of punishment. But I cannot help stating that the compromise which the revised Bill makes between the existing law of whipping and the total abolition of that form of punishment is not one which will commend itself to many in this country. The Bill utterly emasculates the Whipping Law so as to render it useless for deterrent purposes, so much so that it is a question whether it might not be simpler to abolish whipping altogether except for juveniles. It is open to the charge of incompleteness; it is also assailable on the ground of inconsistency. It can be urged with a great deal of force and reason that the policy of abolishing whipping for certain offences while retaining it for kindred offences is illogical and objectionable. It is true that in certain directions the Whipping Act stands in urgent need of liberal revision, but the Bill under review, though an improvement on the first, does not come up to general public expectation, at the same time that it proposes to abolish whipping in many cases where it has a very wholesome and deterrent effect. I fail to see why a starving man who steals a loaf from a baker's shop should get stripes while a clerk who systematically defrauds his master and tampers with his books should be exempted from that form of punishment, or why a stray pickpocket who denudes the passer-by of his gold chain should be more severely treated than the unscrupulous, but withal prosperous, goldsmith who receives it for a song and melts it down in the security and privacy of his family furnace, or why, again, a notorious city *budmash*, who battens on the inoffensive populace by acts of extortion, should be less severely dealt with than the perpetrator of a petty theft. On principle, my Lord, it is difficult to see any moral difference in the acts of a man who commits a petty theft and the receiver who has probably instigated him to commit the offence. I am unable to follow the reasoning that the thief who is a servant or a clerk should be, in the eye of the law, regarded differently to and more considerately than the thief who is not a clerk or a servant. I should have thought that the offence of the receiver and the servant was much more heinous and there was a greater degree of moral turpitude in it. An instigator of theft or dacoity trading in ill-gotten property and a trusted clerk or servant abusing the confidence placed in him and defrauding his master in that capacity is a far more despicable offender than the thief employed or an ordinary cheat. On principle the extortioner and the receiver of stolen property are worse pests to society than an ordinary thief; and it may be fairly said that the policy of abolishing the sentence of whipping for those offences is one of questionable expediency. But, curiously, and any one conversant with the administration of Criminal Law in this country will bear me out that whipping is very rarely awarded by Magistrates for the offences of extortion and receiving stolen property. The proposed amendment of the law thus follows the line adopted by the Magistracy generally in practice so far as these offences are concerned. In my professional experience, not unlike others, I have found that a large percentage of cases under section 411 of the Indian Penal Code are really acts of theft and burglary, and only started because it is often difficult to obtain conclusive evidence of theft even when property has been fully traced. I must also confess that it is very difficult to understand the principle on which dacoity may be punished with corporal punishment while robbery is exempted from the operation of the Act. It is true that robbery is, generally speaking, a less aggravated form of offence and less heinous than dacoity; but

it is difficult to understand why five men who commit a dacoity should be whipped while four men who commit a robbery, perhaps with the same degree of intrepidity, organization, and preparation should escape that form of punishment. I am surprised to see whipping abolished for assaults and use of criminal force upon women with intent to outrage their modesty. That is a very necessary direction in which the punishment can be inflicted with wholesome effect, and clause 5 of section 4 of the Act of 1864 has the sanction and approval of the Indian public. The absence of that clause in the Bill can only be viewed with disappointment. I am glad to find that the Bill deals with acts of rape and dacoity which are in the nature of very serious offences. But, my Lord, it is only in a few of such cases that a sentence of less than five years' imprisonment is passed on conviction. If the sentence of imprisonment exceeds five years, under the provision of section 395 of the Code of Criminal Procedure, it is not permissible to pass any sentence of whipping. It is clear that despite the most anxious desire of Government to deal severely with offenders in cases of rape, in practice section 4 of the Bill will be rendered impotent, as its provision can scarcely be resorted to in view of section 393 of the Code of Criminal Procedure. My Lord, it would therefore be necessary, in order to give full effect to section 4 of the Bill, to repeal so much of clause (b) of section 393 of the Code of Criminal Procedure as prohibits the infliction of whipping in addition to a sentence of imprisonment for a term exceeding five years, in cases of rape and dacoity. It may be argued that whipping in lieu of or in addition to any other punishment as provided by sections 3 and 4 of the Act of 1864 is ineffective as a deterrent. However much old and confirmed offenders may detest and dread the punishment of whipping, its salutary effect as a deterrent, when it is combined with a sentence of imprisonment, will wear off by the period the sentence runs out, and flogging in addition to imprisonment is scarcely useful and may safely be dispensed with. But whipping in addition to other punishments in case of habitual offenders will, ordinarily, prove a very valuable means of increasing the terror of the punishment. It is doubtful, however, if the system of concurrent punishments has any appreciable effect on the minds of incorrigible offenders. But be that as it may, I certainly approve of the retention of that form of punishment in cases of rape and unnatural offences. I would go further and advise the infliction of whipping, as pointed out above, for offences under section 354 of the Indian Penal Code. Women always require extra protection, and when the utter helplessness of Indian women is considered the need for extra severity becomes acuter. The repeal of section 3 of the existing Act appears to be a reform in the right direction; but the action is slightly inconsistent with the principle of section 4 of the Bill. Whipping will still remain an additional punishment for other offences under that section; and if it can be inflicted on accused under section 3 for certain offences in lieu of imprisonment, and in lieu of or in addition to any other punishment under section 4, it seems illogical, if not questionable, to exclude it from the punishments for the same offence committed again and again. But if we accept the principle that the number of offences for which whipping can be awarded in lieu of or in addition to imprisonment must be reduced, I am decidedly of opinion that the curtailment of the power in case of second conviction will be neither injudicious nor unsafe. I welcome the exclusion of political offences from the purview of the Bill. I do think the educated but misguided people who alone are likely to commit such offences are not the right sort of persons to receive this punishment. The limitation of the number of stripes to fifteen in the case of juvenile offenders is wise and humane alike.

"My Lord, I fail to realize what urgency there was to disqualify Second Class Magistrates for the exercise of the powers of whipping under the present law. It is only when specially empowered by the Local Government that a Magistrate of the Second Class can pass sentence of whipping. Has it come to pass that the Local Governments have failed to exercise sound discretion in vesting Second Class Magistrates with powers under the Act, or has any doubt been felt about the competency of that class of Magistrates as a body to exercise powers under the Act judiciously? It does not stand to

reason that it would not be possible for Local Governments to empower carefully-selected Magistrates of the Second Class to pass sentence of whipping. If discretion is left to Local Governments to empower officers fit for the proper exercise of the special powers, it is more likely that a selection would be made on a basis of merit and qualification than in cases where powers are earned by Magistrates by superiority of class only, albeit many among them are wanting not only in tact and judicial ability but often in experience and knowledge of local conditions. I have heard it said that in the present condition of things it would be highly undesirable to curtail the powers of Magistrates. I attach no importance to such apprehensions, and I entertain no misgivings as to the capacity and the strength of the Government to cope with crime, as far as it might in ever so serious a form. I do not plead so much for the Magistrates concerned. I deplore this change in the interests of the victim himself, and I submit this amendment is wholly unnecessary and open to grave objection. I can speak with some degree of authority so far as the Province I have the honour to represent in this Council is concerned, and I unhesitatingly say that the power of delegation has been used with great success and discrimination in the past, and the Second Class Magistrates specially empowered generally use their powers with discretion. I can also state that they as a body seem rather to err on the side of leniency and are more reluctant to inflict whipping than to resort to it. There is no suggestion of an abuse of powers by Second Class Magistrates. Disqualification of the whole class will obviously be an unmerited slur upon them and a source of considerable trouble and harassment to the poor offender. It is therefore as much in the interests of the unfortunate victim of whipping as out of regard for the fair name of the Subordinate Service that I deplore the proposed modification of the law. In practice almost all cases in which whipping would be preferable to imprisonment in the first instance generally come up for trial before Second Class Magistrates, and imagine the inconvenience, the delay, and the dislocation of administrative work that will ensue upon references under section 349 of the Criminal Procedure Code to First Class Magistrates for sentence. In times of famine and periodical rioting, which are not infrequent in this country, whipping has been considered a most appropriate punishment for petty thefts and assaults, especially in the case of juvenile offenders; and it will certainly cause a great deal of inconvenience if that class of offenders have to be sent up for the sole purpose of receiving punishment in consequence of the limitation of the power to First Class Magistrates only. In effecting this alteration in the law the fact has been overlooked that most of the offences contemplated in section 3 of the Bill under review will be triable only by Second Class Magistrates. There will be considerable difficulty for officers, and the escort duties of the police will become far more onerous in view of the unavoidable increase in the number of references under section 349 of the Code of Criminal Procedure. The work will probably increase tenfold; it will divert the attention of First Class Magistrates from far weightier judicial and administrative work. These will be called upon to dispose of petty cases which should always be left to the Subordinate Magistracy. It will be so much waste of valuable time and money. And the effect of the change upon the accused will be that the chances of whipping will be enormously increased, and untold hardships, inconvenience, and undesirable incarceration will be entailed upon them. They will be practically in police custody for a week or ten days, and will have to submit to the attendant evil consequences. Local Governments will find it not only imperative to increase the strength of the police, but will require a much larger number of Magistrates with First Class powers. In the case of juvenile offenders the inconvenience and hardship and misery will be still greater and out of all proportion to the petty nature of the offences. Imagine the misery of a boy under 12 years taken by the police several days' journey away from his native village for no other purpose than to receive half-a-dozen stripes for stealing an anna worth of sweets or fruit in the local bazar. What a misery to his relations also. My Lord, I deprecate the change because the precious time of First Class Magistrates will be wasted in dealing with petty cases, because juvenile offenders will be put to inconceivable harassment and hardship and will not be set at liberty with the

least possible delay, because it will entail not only extra work on Magistrates of the First Class but expense and loss of energy on the State and inconvenience on the convict himself, further, because the amendment will have the effect of unnecessarily transferring to the Sub-Divisional Magistrate petty cases under the Forest and other special laws in which whipping would appear to be the most appropriate form of punishment, and, lastly, because it has the effect of condemning the whole body of the Subordinate Magistracy, many among whom I have found from my personal observation are men of sufficient learning and experience, and fit to be trusted with powers under the Act, and who may be depended upon to use them with circumspection and judicial discretion. The difficulties of the new arrangement appear to me so great, so varied, and so troublesome that Government will sooner or later have to choose between the alternatives of either altogether abolishing the punishment for petty offences or of reverting to the present system.

" My Lord, the striking peculiarity of the present Bill is that, despite the desire of Government to mitigate the severity of the existing law, no provision is made for the revision by the Appellate Court of erroneous sentences of whipping. In almost all criminal cases, except in summary trials and in cases where the punishment of imprisonment awarded by First Class Magistrates is one month or the fine inflicted is Rs. 50, the accused is allowed the right of appeal ; but it seems to be an anomaly of the law that he is not permitted to appeal against a sentence of whipping. The sentence is carried out immediately on conviction. This is one of the main reasons why a sentence of whipping is so much in disfavour with the general public. I feel convinced that if the right of appeal be granted, this form of punishment would cease to be so odious and unpopular. It would at the same time save the Magistrate from adverse criticism, and give general satisfaction. The law, as it stands at present, is obviously incongruous. It is difficult to understand why section 391 of the Code of Criminal Procedure should provide for stay of execution for a fortnight or till the result of appeal in cases where the accused is sentenced to whipping in addition to imprisonment, and refuse a similar concession in cases where the sentence is one of whipping only. There is provision in the law, it is true, for revision by the High Court of all sentences, but the concession is unreal so far as whipping is concerned. The whipping, under section 390 of the Code of Criminal Procedure, is inflicted almost forthwith ; at any rate, long before the High Court can even be moved. And once the punishment is inflicted it is a matter of comparative indifference to the accused if the sentence is ultimately reversed by the High Court. It must be a matter of common knowledge that in not a few cases the sentence of whipping is eventually either wholly set aside or altered or modified, but the accused having already undergone the punishment, after the fortnight contemplated in section 391 of the Code of Criminal Procedure, the result is that many people, though found innocent by the Superior Court, suffer for the indiscretion of the Lower Courts. The setting aside of the order in many cases thus proves infructuous and illusory. The ultimate acquittal cannot help the poor victim ; it cannot undo the wrong done to him ; it cannot make any reparation for the suffering and the degradation undergone, for the stigma left permanently by that punishment. It also happens, not unoften, that people dissatisfied with and aggrieved by perverse convictions, who would otherwise have gone up to higher tribunals for redress, have perforce to submit to their hard lot. It seems to me to be a peculiarly unfortunate and inexplicable arrangement that while time is granted for payment of fines, there is unceremonious haste in executing a sentence of whipping. My Lord, I have heard it stated in connection with this that a demand for an appeal is based on a misconception of the object of a sentence of whipping only. Whipping is supposed much lighter than a short term of imprisonment, and since it is given to save the accused from harassment and degradation through association with hardened criminals in jails and since the risk of error of judgment is so small, it is only proper that finality should attach to the orders of the Magistracy on this head. It is therefore that under sections 413 and 414 of Act V of 1898 no appeal lies against a sentence of whipping only. I am

afraid I cannot accept the proposition that the risk is very small where a First Class Magistrate inflicts a sentence of whipping. It would certainly increase the salutary effect of this form of corporal punishment, both as a wholesome deterrent and as the means of saving the accused from contamination in jail through association with criminals, if the accused realizes the justice of the sentence by an appeal to a Superior Court. It will not matter much if execution has to be suspended till the result of the appeal. If Courts are apt to err with regard to bigger offences and severer sentences, there is no reason to imagine they would not err in their decisions in cases of comparatively smaller offences. These decisions are of equal importance to the persons immediately concerned. I am therefore of opinion that the strong public feeling in favour of the stay of execution of a sentence of whipping only to allow time for the testing of the correctness of the decision is not without ample justification. Some sort of opportunity ought certainly to be given to the victim of establishing his innocence and averting, if possible, the physical suffering and the mental agony which that punishment necessarily inflicts.

"My Lord, I approve of the decision arrived at by the Select Committee, in view of the extensive changes contemplated, to repeal wholly the Act of 1864, and to present a complete and consolidating Bill. Since 1864 at successive periods many important changes have been made in the Act, and it is expedient now to re-enact the law on the subject of whipping as a judicial punishment instead of further amending the old Act. It is certainly more advantageous to give the country a consolidated Whipping Act than to put Judges and Magistrates to the necessity of constantly looking into a Statute replete with amendments and excisions. I would also suggest in connection with the re-enactment of the law the expediency of carefully considering the rules regulating the mode of inflicting whipping which are now in force. My Lord, I had intended to move amendments on the lines suggested above, but desist, knowing as I do that the general feeling among the Hon'ble Members is opposed to them. I am reluctant to further take up the time of the Council by proposing amendments that are sure to fall through.

"My Lord, before I close I must allude to one other point intimately connected with the present subject. I feel I should not be doing my duty if I failed to draw your attention to it. Whipping is also inflicted inside the jails under the Prisons Act. Certain acts of convicts are declared to be prison offences, and the law empowers the Superintendent to inflict, among other forms of punishment, whipping, provided the number of stripes do not exceed thirty. It is a well-known fact that this punishment is frequently awarded as a disciplinary measure for misbehaviour, disorderly conduct, neglect, disobedience, and dereliction of prison duties. In my humble opinion no amendment of the Whipping Act can be complete or can produce any appreciable good, or can attain the end which the Government has in view of conciliating public opinion, without a corresponding modification of the Prisons Act. Such a modification is urgent on grounds of uniformity and consistency in legislation as much as on those of humanity. Any abuse of the powers under the Whipping Law can be checked and corrected by a strong expression of public opinion, inasmuch as the sentences are executed and the flogging is administered in the broad light of the day; but where this punishment is given by jail authorities inside the jail precincts the Jail Superintendent is the master of the situation and the sole judge of the propriety of the order; his acts are not open to public observation and criticism. There is, therefore, a considerable risk of this power vested in him by the Prisons Act being exercised in an injudicious, improper, and indiscriminate manner. My Lord, it seems to me an anomalous departure in legislation to deprive of the power Second Class Magistrates of experience and judicial training, who can only act after recording evidence and giving reasons for a conviction, and to leave the Jail Superintendent in possession of plenary powers to summarily pass orders of whipping on the testimony of his warders and ill-educated assistants. Though the amendment of the whipping legislation has been undertaken in deference to public opinion, and not so much for the intrinsic merits of the subject and from considerations of administrative necessity, it may well be expected that the work of humanity in which the Government is engaged will be done thoroughly

and carried to its logical and legitimate end. It is true there has not been a loud demand for an amendment of the Prisons Act. From the necessities of the case there could not be. So few people know of all that passes inside the jail. But if the philanthropic work which the Government has taken in hand cannot be done satisfactorily without a corresponding amendment of the Prisons Act, that amendment becomes exigent, notwithstanding the comparative indifference of the public to this important matter. A considerate concession by Government will be appreciated by the people, will take away much of the odium of whipping, and will ensure popular co-operation in the administration of this somewhat unpopular law. I fail to see how Government could possibly avoid a considerable modification of the powers under the Prisons Act after it has once decided to recast the Whipping Act on more humane lines. I confidently trust that in the same spirit in which this legislation has been undertaken the Government of India will now move without delay for the mitigation of the severity of flogging under the Prisons Act, and thereby justify its traditional claim to justice, humanity, consistency, and benevolence and earn the gratitude of the nation."

The Hon'ble SIR KHWAJA SALIMULLA said:—"My Lord, I shall vote for the passing of this Bill, but I cannot allow it to be passed without recording my humble protest at the way this piece of legislation has been, virtually, forced upon the Government at the instance of irresponsible members of the Ultra Radical Party in the House of Commons, who hold the brief for, what I may term, the Home Rule Party in India; for we all know that when the Presidency Magistrate of Calcutta used his powers under the Whipping Act against certain youthful political offenders, agitation in this country was set on foot and a furore was created in the House of Commons, and in a moment of weakness the Secretary of State promised that this power would be removed.

"We find no valid or tangible reason has been advanced by my Hon'ble friend who has introduced this Bill; we cannot, however, deny that consolidation of certain Acts such as the one before us, is desirable, but there are many other Acts of the legislature which need this process more than the various Acts this Bill, when passed, will consolidate. Not only do we find no reasons given, but we see from the papers before us that no one in India appears to have demanded the amendments now to be made, while some of the Governments have gone so far as to openly protest against the change. We find the principal amendment of the Bill to be strongly opposed by all the most competent Magistrates and authorities in the country, some of whom have boldly stated that the Act to be passed is the outcome of representation from England by people arguing on general principle and with no experience of the East; and I agree with the Magistrate of Jhansi that 'the proposal to abolish whipping in clauses 2 and 3 appears to be merely pandering to a spirit of mawkish sentimentality that has grown up in a certain class in England owing to their having lived so as to be absolutely unacquainted with the classes that commit the crimes, whipping for which it is proposed to abolish; a spirit which a certain more or less educated class in India has chosen to imitate.'

"That the Government of India, fully aware as they are of the great public inconvenience these modifications of the Whipping Act will entail, such for instance as the taking away of the authority of Government to confer the power of whipping on competent and able Second Class Magistrates, should nevertheless at the bidding of the Home authorities pass a piece of legislation quite unsuited to the present time, when the hands of the Magistracy ought rather to be strengthened than crippled, is a matter against which I desire to record my protest and to express my hope that the Government will not make it a precedent. I am respectfully of opinion that legislation in this country should take its initiative from the Government of India and not at the instance of the Home authorities. I had intended to criticize this Bill in detail, but my Hon'ble friend Mr. Dadabhoy has left nothing for me to add to the observations I have just made."

The Hon'ble SIR HARVEY ADAMSON said:—"My Lord, I have listened with close attention to my Hon'ble friend Mr. Dadabhoy, but I confess that

I do not quite understand his attitude towards the Bill, and I am not sure whether he thinks that the Bill goes too far or that it does not go far enough in relaxing the severity of whipping. He says that he is not opposed to the Bill in so far as it tends to mitigate the severity of the existing statute, but he then goes on to cite a number of offences for which he would prefer to retain the punishment of whipping. He says that the Bill is open to the charge of incompleteness and that it is assailable on the ground of inconsistency. In introducing the Bill I explained the general principles which guided the Government of India in determining whether the punishment of whipping should be attached to an offence, and I may here briefly recapitulate them. They are—

- (1) that so long as the system of prison administration in India is one of association and not of segregation, it is necessary, for the protection of first offenders from contaminating influences, to retain whipping as a punishment for theft and kindred offences ;
- (2) that whipping is an unnecessary punishment for offences that are not of an active or daring character ;
- (3) that whipping should not be inflicted in cases where it is likely to outrage self-respect ;
- (4) that whipping is peculiarly suited to brutal, cruel and sordid offences involving personal violence ;
- (5) that where offences are not of this nature it is unnecessary to add whipping to imprisonment on a second conviction ;
- (6) that whipping is a suitable punishment for juvenile offenders when administered with moderation.

“ These principles are intelligible, and I venture to think that they commend themselves to public opinion. But when it comes to apportioning in accordance with abstract principles the offences under the Indian Penal Code, each of which contains many varying shades of moral obliquity, it is evident that mathematical precision is unattainable, and I daresay that whatever apportionment may be made there will be some colour for a charge of inconsistency. Applying these principles to the specific instances in which the Hon'ble Member twits us with inconsistency, I think it will be found that they considerably enlighten the situation. They explain for instance why the common thief should be whipped while the clerk is exempt, and why the active thief is distinguished from the passive receiver of stolen property. It is not, as the Hon'ble Member has put it, a question of the heinousness of the offence. I fully admit that the trusted clerk or servant who defrauds his master commits a more heinous offence than the common thief, and that the receiver often deserves severer punishment than the person whom he has instigated to steal. It is a question of the nature not of the severity of the punishment. The clerk and the receiver can still be punished with greater severity than the casual thief. But I submit that under the principles which I have stated, which are reasonable and proper principles, the nature of the punishments should differ.

“ The Hon'ble Member, and many others, have objected to the exclusion from whipping of offences under section 354 of the Indian Penal Code, which relates to assault or the use of criminal force to women. The reason for the exclusion is that the section comprises many offences of a very petty character. Touching a woman's cheek or grasping her hand may be offences under this section, and I do not think that any one will urge that such trifling misdemeanours should be punished with whipping. Those who desire the inclusion of whipping have in their minds the more aggravated forms of assault, amounting to attempt to ravish a woman. I quite admit that an offence of this nature would be appropriately punished with whipping, but it is not properly an offence under this section. It is an attempt to commit rape which under clause 4 of the Bill is made punishable with whipping in lieu of or addition to other punishment.

“ In answer to the Hon'ble Sir Khwaja Salimulla, I may say that I have no faith in the argument that such mitigation of the severity of whipping as we

have embodied in this Bill will weaken the hands of the authorities in the suppression of crime. This is the old stock argument that has been put forward on every occasion and in every country in which attempts have been made to relax the severity of punishment, and the history of crime has shewn that it is quite fallacious.

"The Hon'ble Mr. Dadabhoy urges that there should be provision for an appeal against sentences of whipping, where whipping is the sole punishment. An appeal of course already lies in all cases where whipping is combined with imprisonment. I may be permitted to rectify a slight ambiguity in the Hon'ble Member's language with regard to these cases. When an appeal has been presented the sentence of whipping cannot in any case be carried out until it has been confirmed by the Appellate Court, and this is quite independent of the period of fifteen days mentioned in section 391 of the Criminal Procedure Code. But a sentence of whipping alone is on entirely different ground. When a person is sentenced to whipping he must obviously be kept in custody until the sentence has been inflicted. A provision for appeal would thus have the effect of adding imprisonment to the sentence of whipping. It would also defeat the object of whipping in such cases inasmuch as it would subject the prisoner to the contamination of jail life, the very thing which it is desired to avoid. The only condition under which a sole sentence of whipping can be justified is that it shall be inflicted summarily.

"Two Hon'ble Members have taken strong exception to the provision of the Bill which excludes specially empowered Second Class Magistrates who now exercise powers of whipping from doing so in future. Local Governments also take exception to this provision, which I may say was initiated by the Secretary of State and not by the Government of India. The objections were fully represented to the Secretary of State, who after considering them adhered to his original view, and left no option to the Government of India in the matter. I cannot conceal my apprehension that the restriction will cause considerable inconvenience. It can be met to some extent by a freer resort to the power of releasing first offenders upon probation of good conduct under the provisions of section 562 of the Criminal Procedure Code, a power which might well be used more frequently than is done at present.

"The Hon'ble Mr. Dadabhoy has expressed the opinion that no amendment of the Whipping Act can conciliate public opinion without a corresponding modification of the Prisons Act. I venture to think that the Hon'ble Member cannot have the slightest conception of the vast strides in the path of humanity that have been taken during the past thirty years in the jails of India in respect of corporal punishment. The Prisons Act of 1894 provides that no punishment of whipping shall be awarded until the Superintendent has recorded the substance of the evidence of the witnesses, the defence of the prisoner, and the finding with the reasons thereof. The Jail Manuals forbid recourse to whipping except for serious offences or continued recalcitrant behaviour. The exercise of his whipping powers by a Superintendent is most jealously watched by his departmental superiors. The whole tendency of the jail administration is to make as little use of this form of punishment as possible, and no part of a Superintendent's work receives closer scrutiny at the hands of his Inspector General and the Local Government than the way in which he exercises this power. I will not content myself with general statements but will add statistics, and I think the figures which I am about to quote will be a complete surprise to the Hon'ble Member. In 1878 and 1879 the total numbers of whippings in Indian jails were 21,015 and 21,757 respectively. In 1905 and 1906 they were 799 and 668. It is, therefore, abundantly clear that no fresh legislation is required in order to secure moderation in the infliction of corporal punishment in jails. The remarkable mitigation of the severity of whipping in jails has, as I stated in introducing the Bill, been accompanied by an improvement of discipline. I hope that these facts and figures may tend to allay the fears of those who think that the moderate relaxations contained in this Bill will imperil the maintenance of peace and order."

The motion was put and agreed to.

AMENDING (ARMY) BILL.

His Excellency THE COMMANDER-IN-CHIEF moved that the Bill to amend certain enactments relating to the army be taken into consideration.

The motion was put and agreed to.

His Excellency THE COMMANDER-IN-CHIEF moved that the Bill be passed.

The motion was put and agreed to.

The Council adjourned to Monday, the 29th March 1909.

J. M. MACPHERSON,

*Secretary to the Government of India,
Legislative Department.*

CALCUTTA ;

The 22nd March 1909.

APPENDIX I.

Statement showing the number of permanent Muhammadan assistants (as distinct from copyists and typists) out of the total number of assistants in each of the Secretariat offices of the Government of India, with their pay and date of appointment.

| Name of Department. | Total number of assistants as distinct from copyists and typists. | Number of permanent Muhammadan assistants as distinct from copyists and typists. | Present pay. | Date of appointment in the Department. | Whether appointed by competitive clerical examination or by pure nomination. | REMARKS. |
|-------------------------------------|---|--|--------------|--|---|---|
| Home Department | 55 | 1 | Rs. 100 | 1st August 1903 | Nomination. | |
| Foreign Department | 75 | 1 | 100 | 14th December 1896 | Do. | |
| | | 1 | 50 | 16th July 1906 | Do. | |
| | | 2 | | | | |
| Army Department | 55 | 1 | 50 | 6th May 1908 | Do. | |
| Department of Military Supply. | 33 | 1 | 100 | 18th June 1902 | Appointed after passing clerical examination. | |
| | | 1 | 80 | 1st August 1902 | Ditto. | |
| | | 2 | | | | |
| Public Works Department. | 36 | 1 | 150 | 19th May 1877 | These four men were appointed before the introduction of the clerkship examination rules in 1888. Nomination (after the clerkship rules were introduced). | All these men were originally in the Public Works Department Secretariat which included up to 1905 what is now called Railway Department (Railway Board), and they were transferred to the Railway Board on the formation of the Board from 1st April 1905. |
| | | 1 | 80 | 1st January 1880 | | |
| | | 1 | 50 | 15th March 1883 | | |
| | | 1 | 80 | 3rd March 1885 | | |
| | | 1 | 70 | 1st June 1905 | | |
| | | 1 | 40 | 1st October 1907 | | |
| | | 6 | | | | |
| Railway Department (Railway Board). | 73 | 1 | 120 | 2nd October 1899 | Appointed after passing clerical examination. | |
| | | 1 | 100 | 5th June 1903 | | |
| | | 1 | 70 | 28th December 1898 | | |
| | | 1 | 70 | 9th July 1904 | Nomination. | |
| | | 4 | | | | |

Statement showing the number of permanent Muhammadan assistants (as distinct from copyists and typists) out of the total number of assistants in each of the Secretariat offices of the Government of India, with their pay and date of appointment — contd.

| Name of Department. | Total number of assistants as distinct from copyists and typists. | Number of permanent Muhammadan assistants as distinct from copyists and typists. | Present pay. | Date of appointment in the Department. | Whether appointed by competitive clerical examination or by pure nomination. | REMARKS. |
|---|---|--|--|--|--|---|
| Finance Department (Ordinary Branch). | 57 | 1 1 1 — 3 | Rs. 250 100 65 | 2nd June 1903 19th June 1906 1st June 1906 | Nomination. | |
| Finance Department (Military Finance Branch). | 22 | Nil | Nil | Nil | Nil | This Branch was formed in 1906. |
| Department of Commerce and Industry. | 54 | 1 1 — 2 | 300 150 | 8th May 1906 18th June 1906 | Nomination | This Department was formed in 1905. |
| Department of Revenue and Agriculture. | 42 | 1 1 — 2 | 100 50 | 1st April 1899 27th January 1907 | Do. Appointed after passing clerical examination. | |
| Legislative Department. | 23* | 1 1 1 1 1 1 — 6 — | 250—300 80 75 50 40—60 25 | 9th January 1903 16th May 1896 1st April 1885 26th April 1878 5th October 1895 14th November 1900 | Nomination | *This figure includes the strength of the Translation Branch to which the clerkship examination rules do not apply. |
| TOTAL | 505 | 29 | ... | ... | Nominated . 24 Passed candidates . 5 | |

APPENDIX II.

Statement showing the number of Muhammadan assistants (as distinct from copyists and typists) appointed by pure nomination, in comparison with the total number of appointments made in that manner during the period 1888—1909 in the several Departments of the Government of India.

| Name of Department. | Number of appointments made by pure nomination from 1888 to 1909. | Number of Muhammadans appointed by pure nomination from 1888 to 1909 | REMARKS. |
|---|---|--|---|
| Home Department | 52 | 2 | |
| Foreign Department | | ... | The information required by the Hon'ble Member is being collected by the Foreign Department. |
| Army Department | 7 (since 1906) | 1 | This Department was formed only in 1906. |
| Department of Military Supply. | 3 (since 1906) | Nil | Ditto. |
| Public Works Department | 36* | 4* | * Up to 1905 the Public Works Department included what is now the Railway Department (Railway Board), and these figures include men appointed to the Public Works Department including the Railway Branch prior to 1905. It is not possible to show separately what men were appointed to the Public Works and what men to the Railway Branch, as all the men were borne on one list. |
| Railway Department (Railway Board). | 8 | Nil | This Department was formed on the 1st April 1905. |
| Finance Department (Ordinary Branch). | 34† | 5 | †Includes men transferred from the Accounts and other Departments. |
| Finance Department (Military Finance Branch). | 5 | Nil | Since the formation of this Branch in 1906, five new appointments have been added to the office establishment, but there were no suitable Muhammadan candidates for the same. |
| Department of Commerce and Industry. | 10 | Nil | This Department was formed in 1905. |
| Department of Revenue and Agriculture. | 36 | 3 | |
| Legislative Department | 4 | Nil | |
| TOTAL | 195 | 15 | |



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CALCUTTA, SATURDAY, APRIL 3, 1909.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART VI.

Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS
UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS,
1861 AND 1892 (24 & 25 VICT., C. 67,
AND 55 & 56 VICT., C. 14).

The Council met at Government House, Calcutta, on Monday, the 29th March 1909.

P R E S E N T :

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy and Governor General of India; *presiding*.
His Honour Sir Edward Norman Baker, K.C.S.I., Lieutenant-Governor of Bengal.
His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., G.C.I.E., Commander-in-Chief in India.
The Hon'ble Sir H. Erle Richards, K.C.S.I., K.C.
The Hon'ble Major-General C. H. Scott, C.B., R.A.
The Hon'ble Sir Harvey Adamson, Kt., C.S.I.
The Hon'ble Mr. J. O. Miller, C.S.I.
The Hon'ble Mr. W. L. Harvey, C.I.E.
The Hon'ble Sir G. F. Wilson, K.C.B., K.C.M.G.
The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.
The Hon'ble Mr. A. A. Apcar, C.S.I.
The Hon'ble Maung Bah Too, C.I.E., K.S.M.
The Hon'ble Mr. W. W. Drew.
The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.
The Hon'ble Raja Sir Muhammad Ali Muhammad Khan, K.C.I.E., Khan Bahadur, of Mahmudabad.
The Hon'ble Mr. N. C. Macleod.

[*Mr. Holms.*]

The Hon'ble Mr. J. Andrew.
 The Hon'ble Mr. Maneckjee Byramjee Dadabhoy.
 The Hon'ble Mr. F. A. Slacke, C.S.I.
 The Hon'ble Mr. J. M. Holms, C.S.I.

MISCELLANEOUS.

The Hon'ble SIR HARVEY ADAMSON laid on the table the list * of Muhammadan religious and charitable endowments and trusts under Government management in the different provinces, as asked for by the Hon'ble Nawab Saiyid Muhammad at the meeting of the Legislative Council on 26th February 1909, and the statement † showing the cost of special Commissions of Enquiry as asked for by the Hon'ble Sir Khwaja Salimulla at the meeting of the Legislative Council on 5th February 1909.

DISCUSSION OF THE FINANCIAL STATEMENT FOR 1909-1910.

The Hon'ble MR. HOLMS said :—“ My Lord, the few remarks which I have to make concern the terms of the revised financial settlement with the United Provinces which have recently been announced.

“ My predecessors have not been backward in urging on the Government of India the claims of the United Provinces to the enjoyment of a larger share of the revenues raised therein, and the Council will, I think, admit that the result of the present revision is sufficient justification for their importunity. The last settlement was entered into in 1904, but it was soon found that the provision made for the needs of the Province was entirely inadequate. The Province had been starved in the past, and no allowance was made in the settlement for the large expansion of expenditure which was needed to satisfy its legitimate claims.

“ The settlement has now come under revision. In the revision it has been recognised that the principle of basing the settlement on recent actuals may fairly be departed from, when otherwise the result would be the perpetuation of an inadequate standard of expenditure. This principle is no doubt one of the main bulwarks of the keeper of the public purse, but like most principles it has its exceptions. Among the satisfactory features of the new settlement these may be noticed ; the larger share under certain heads of growing revenues now placed at the disposal of the Province, the smaller proportion which the non-elastic item of fixed assignment now bears to the whole income, and the guarantees given by the Government of India to ensure the stability of land-revenue and of irrigation receipts.

“ I am to express the gratitude of the Government of the United Provinces for the liberality and fairness with which the question has been treated by the Government of India and for the arrangements which they were willing to make. These arrangements, however, have been subjected to modification in certain respects. It is true that, since the settlement has been under discussion, the Imperial Government have found themselves in more disturbed financial waters, and no exception need be taken to the postponement of the allotments for certain reforms until these reforms are on the eve of being carried out.

“ The provision in the scale of expenditure of three lakhs for the upkeep of the new Medical College at Lucknow and the hospital to be attached thereto has been reduced to two lakhs for the hospital only. It was originally intended to provide the remaining lakh for the Medical College from Provincial funds, but the famine has entirely altered the financial position, and the full provision made might well have been allowed to stand.

“ But the most important matter to which I would refer is the question of an initial grant. Under the operation of the rules regarding the debit of famine

* Appendix I.
 † Appendix II.

[*Mr. Holms.*]

charges the considerable balance of nearly 56 lakhs, which we had in hand two years ago, has been completely wiped out, and we are left at the beginning of the coming year with the ordinary minimum balance of 20 lakhs which has been restored, plus an amount which is earmarked for a particular purpose. It is true that this amount has been entered in the budget as a lump assignment in connection with the revision of the Provincial settlement, but this classification does not alter the fact that it is set apart for the building of the new hospital to be attached to the Medical College at Lucknow, and that it will not be available for the general needs of the administration. The grant of an initial assignment for general purposes is the ordinary accompaniment of a financial settlement, and is designed, I understand, to enable a province to meet the unavoidable demands on its resources not provided for in the settlement, until the Provincial items of income have had time to expand. The United Provinces, which have worked for several years on a settlement less favourable than that of most other provinces, and which have been crippled by a severe and widespread famine, appear to have special claims to liberality in this respect. Financial straits may not allow of such a grant at present, but when the sky clears it is hoped that the Imperial Government will see its way to allow to the Local Government the equivalent of what might have been given as a grant with which to start the new arrangements fairly on their way.

"In the budget before the Council it has not been found possible to provide for any large grants to Provincial Governments in aid of administrative developments. But there are two matters of importance to the United Provinces which I desire to mention.

"In view of the admitted backwardness of the Province in the matter of education, provision has been made in the settlement for an increase of six lakhs in the Provincial expenditure under this head. This amount is not earmarked for any particular reforms, but is to be used for the general improvement of education. It is urged that this addition is wholly insufficient to carry out the scheme which has been worked out for the furtherance of secondary education involving the provincialisation of high schools, in addition to other urgent reforms of pressing importance. The improvements which the Local Government desires to introduce in secondary education are estimated to cost over 10 lakhs a year net, and in addition at least one lakh a year is needed for female education. Defects both in respect of buildings and equipment and in the quality of the teaching in secondary schools are prominent in the United Provinces, where the scale of expenditure on education is below the standard of other Provinces. Even when the effects of the famine are over and the Provincial finances are restored to equilibrium, it is clear that whatever the additional expenditure may be, which the Province can afford to devote to education, it will be fully utilized in meeting the normal expansion of educational charges, and cannot be reckoned on to meet the cost of the larger schemes which have been worked out in the endeavour to bring the Province into line with the rest of India. It is to be regretted that the present financial position renders it unlikely that any further subvention from Imperial revenues will be made in the near future in aid of educational expenditure in the United Provinces.

"So in the important matter of technical education the Province is for the most part dependent on the Imperial Government for funds. A scheme to foster industrial development, mainly by providing facilities for technical education, has been matured and is before that Government. The scheme can be introduced on a capital expenditure of 15 lakhs and a recurring grant of $4\frac{1}{2}$ lakhs a year. No provision for this has been made in the revised settlement, but an assurance has been given that the question of assistance from Imperial funds will be considered without awaiting the schemes in other provinces which may not yet be ripe for submission. It is hoped that, when the financial clouds clear away, the Government of India may be able to give a substantial subsidy towards the vigorous prosecution of the policy of industrial development, in which the public have displayed the keenest interest.

[*Mr. Holms ; Mr. Slacke ; Mr. Dadabhoy.*]

"In conclusion, I have to congratulate the Hon'ble the Finance Member on the decision to frame his budget for the ensuing year without resort to increased taxation."

The Hon'ble MR. SLACKE said :—"My Lord, while respectfully conveying to Your Excellency the gratitude of the Province to which I belong for the timely assistance that Your Excellency has given to its finances, I venture to bring to the notice of Your Excellency that in the course of the present and the preceding two years the Government of Bengal has had from their own resources apart from any Imperial allotments to meet an expenditure of 48 lakhs of rupees on charges that were quite unforeseen, while in the current year the loss under Land Revenue, Excise and Stamps as compared with the estimates, a loss due to a bad season, exceeded 5 lakhs. In the case of the Police, additional accommodation and increases in subordinate and menial establishments, supplies and services and contingencies account for $6\frac{1}{2}$ lakhs, grain compensation amounted to $23\frac{3}{4}$ lakhs, famine relief $9\frac{3}{4}$ lakhs, and the proceedings undertaken in connection with the outbreak of anarchism and sedition required 8 lakhs."

"My reason for enumerating these facts is the hope that should the coming rains break favourably and be well distributed and should the political aspect improve, the Government of Bengal may be at liberty to approach Your Excellency's Government for further financial assistance, and that such application will be sympathetically received and generously treated."

The Hon'ble MR. DADABHOY said :—"My Lord, an adversity Budget with a prospective deficit for capital requirements of £6,406,100 (not taking into account the heavy balance of the sterling loan of $7\frac{1}{2}$ million pounds floated in January last), proposed to be made up by borrowings both here and in England to the extent of over six crores of rupees and the reduction of the cash balances by £2,339,400, naturally would disconcert a Finance Minister who has only recently come to office. It discloses an alarming state of agricultural and commercial depression with an element of uncertainty that might in the end upset the financial calculations for the coming year. Estimates are, as the Hon'ble Sir Guy Fleetwood Wilson pithily puts it, 'largely a gamble in rain.' It will be unwise therefore to count too much on the budgeted surplus; all we can hope for is that the forecast may prove true. But alongside of this darkness of the doleful account there is an agreeable feature; the Hon'ble Finance Minister is to be congratulated upon his wise policy of economy and retrenchment. The public will feel grateful to him for it. He can justly claim credit for 'strict economy' which 'is the main feature of the Budget.' He regretted in Council it had fallen to his lot in the first year of office to prepare a budget involving a sharp curtailment in expenditure. For the causes leading up to that result he has our genuine sympathy; in the policy itself there is ground more for felicitation than commiseration. My Lord, the people need a Finance Minister who so thoroughly realises the great need of Indian finance, 'close economy. The avoidance of an increase in the burdens of the people—which was just an imminent possibility—is likewise a point in Sir Guy Fleetwood Wilson's favour. Far better we should progress slowly without additional taxation than that a heavy programme of work should be taken in hand at the sacrifice of the poor Indian taxpayer. The Hon'ble Member will have the satisfaction to know his policy is appreciated by the people, and he has the support of the Indian public in his financial scheme. If he is disposed to respond more fully to the wishes of the Indian community, more liberal and expansive grants for Sanitation, Irrigation, and Education—Primary and Secondary, Commercial, Technical, and Industrial—and a substantial reduction in the Railway and Military expenditure will become necessary."

"It was expected the subject of high prices would receive proper treatment at the hands of an economist of Sir Guy Fleetwood Wilson's experience and reputation. My Lord, abnormal prices still rule in the market, causing acute distress to thousands of families. The position cannot surely be viewed

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with indifference by Government. A patriarchal Government especially has serious responsibilities in the matter. People have been taught to look up to it for almost every mundane advantage, and it will not do now to wait for the operation of economic laws for a restoration of the *status quo*. I believe, and I am supported by the opinions of a large number of people who ought to know, that the evil is, to a large extent at least, amenable to administrative treatment. But before the remedy can be applied the causes must be thoroughly sifted, and that is just an inquiry which can with advantage be undertaken only by Government. My Lord, much time has already been lost, and further delay will not only leave the people helpless in the face of a growing evil of incalculable potentialities for mischief, but will most effectively cause widespread discontent and, consequentially, unrest. The complex nature of the subject apparently accounts for the indecision of Government, whereas in my humble opinion, it should have impelled it to energetic action. It is because the subject is complex that an inquiry by Government has become necessary. A simple fact does not require elaborate examination. The thing lies on the surface; the cause is obvious; the solution is plain; the way is clear. But not so in a matter dependent upon a complex variety of conditions, including international commercial operations. That must be the subject of Government inquiry, and the sooner it is undertaken the better for both Government and the people. An authoritative pronouncement on the causes and the solution of the difficulty will remove much of the popular misapprehensions, fix the limits of the responsibility of Government, and prepare the ground for the application of the proper remedy. It is therefore in the best interests as much of the Government as of the people that an inquiry by a Commission is demanded with such persistence. I fervently hope Government will now make up its mind and appoint, to ensure full and independent investigation and to secure popular confidence, a Joint Committee of Inquiry of officials and non-officials.

"My Lord, the rise in prices which causes so much distress throughout India would not have been so disconcerting an element in national calculation were this, as it should have been before now, a great manufacturing country like England, Germany, or Austria. The quantum of prices has nothing intrinsically wrong about it, and, as must be obvious, the mischief arises only from the poverty of the people. The aim, therefore, of wise administration must be to increase by all legitimate means the financial ability of the citizen, not only by the removal of artificial and preventible causes of the appreciation in values, but by the induction of at least a proportionate increase in wages. My Lord, a good deal is heard in India about recurrent famines. It is an endless tale of woe and suffering. There is hardly a year in which some part or other of the vast Peninsula is not affected. I imagine an extensive area like that of our country can never be wholly free from drought and failure of crops. But recognising as I do this fact, I fail to see why the effects of a seasonal calamity should not be considerably minimised, if not completely prevented. My Lord, drought is not an essentially Indian evil, but famine has unfortunately come to be; and yet it is a long step from drought to famine. The position thus offers a problem with which British statesmanship must seriously grapple and solve. But beyond the preparation of a creditable Famine Code that statesmanship has not been productive of much good so far. The energy of Government seems to have spent itself in the narrow channels of the details of Famine relief. Government has not gone to the root of the matter yet; little has been done to increase either the staying power of the people or the food-supply of the country. Millions of acres of land now lying waste can be converted into smiling fields by the inauguration of well-devised systems of drainage and irrigation. The larger the area under cultivation the lesser the risk of suffering from drought. The contingency is unlikely that there should be drought all over the continent at the same time. There are weird tracts, my Lord, with great potentialities of fertility, which can be turned into thriving villages of contented cultivators and industrious artisans under a judicious system of inland emigration. Parts of the country, again, which appear too inhospitable for the agriculturist ought to be, and can be made into,

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hives of small industries, ensuring plenty to the artisan and peace to the land. My Lord, I believe that the time has come when Government should encourage by every legitimate means in its power inland emigration and discourage exodus to distant and unsympathetic colonies, the more so since it feels itself powerless to protect Indian emigrants from maltreatment at the hands of selfish and exclusive colonists. Here within India there is ample room for all Indians. And not only that: the country requires the assistance of all her sons in the work of development.

"My Lord, Government must not be slow to take full advantage of the great industrial awakening of India. The inquiry is fruitless as to how the existing industrial prostration of a country once enjoying a world-wide reputation for the excellence of her manufactures came about. The fact is there somehow, and we must settle our programme of action in full recognition of it. Fortunately the darkness of the night is past, and the streaks of dawn illuminate the horizon. The people have awakened. A wholesome change has come over their ideas, thoughts and spirit. Government should foster this new spirit, and guide the industrial activity of the nation into profitable channels. My Lord, it would be unkind to say Government does not recognise its responsibility in the matter. I am aware it has already given evidence of its deep concern for the industrial progress of India by the creation of a special department for the regulation of Commerce and Industry. That department has now been in existence for some years, but the results have not been quite commensurate with the high expectations of the public. Possibly the time is too brief; possibly the department has had its attention too much engrossed by large schemes to care much for small industries which must be introduced far and wide to effect a real improvement in the condition of the people. But the department is now in charge of an officer fitted alike by his experience, versatility and resourcefulness to give a healthy direction to its operations. It is needless to remind the Hon'ble Mr. Harvey that big concerns, owned and managed by Joint Stock Companies, with lakhs of rupees at their back mostly imported from foreign countries, the bulk of the profits which must go out of the country, will in the end only swell the ranks of operatives, aye prosperous, but operatives all the same. They will not improve the lot of the nation. Exploitation with foreign capital is, I know, an attractive idea, but, on analysis, will be found to be productive of only a modicum of good. For a real amelioration in the condition of Indians the industries must be in their hands, owned and worked by them. In any other contingency the national asset will be precious little. It may be argued it is open to Indians to come into the field and by their merit win the race. But that is hardly fair or practical. The competition is unequal and highly disadvantageous to Indians. For them industrial enterprise on European lines is a novel venture, the strangeness of which is calculated to repress enthusiasm and induce timidity. We lack expert knowledge, experience, guidance, facilities, and unlocked capital. Suitable markets for the sale of manufactures even are not known to us, and from the necessities of the position, we are hopelessly behind the European manufacturer in respect of facilities for international commercial operations. To cap all, the fiscal policy of this Government being dependent upon that of the United Kingdom, at times it entails hardships and disadvantages which, without helping much the English manufacturer, seriously handicaps the Indian manufacturer in his competition with manufacturers of other countries.

"My Lord, with Government help much might be done to improve the present unsatisfactory condition. Some of the measures necessary for industrial progress must emanate from Government. The first step necessary is to ensure the dissemination of expert knowledge by the establishment at suitable centres of properly equipped Technological Colleges with branches in the interior. Institutes for the impartation of commercial education are equally urgent. The cost, large though it may be, must be incurred in the interests of the nation, and the sooner it is done the better. No expenditure could be more reproductive in the long run than

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money spent on the industrial and commercial training of the people. The institutions lately started by Government must be admitted to be wholly insufficient for national training in either of those departments of knowledge. A comprehensive and thorough-going scheme is urgently required. The results of the small efforts hitherto made will provide data at once inadequate and unreliable for any future pronouncement about the utility or otherwise of an expansive system of special training. Industrial scholarships, tenable at large centres of industrial activity, will prove a valuable aid to industrial education. While I gratefully acknowledge the action taken by Government in this behalf, I cannot but regret that they are not more numerous and more comprehensive as regards subjects of study.

"In the industrial development of the country Government help in other directions is not only desirable, but imperatively necessary. Facilities for the sale of indigenous manufactures should be provided, and they should be preferentially purchased by Government, if only to encourage production. Circulars, reports and resolutions have not been wanting giving evidence of the Government's desire to buy articles made in India, but it may be doubted if all that could be done in this respect has been done.

"In the present infant stage of Indian manufactures a judicious protective tariff is the *sine qua non* of progress. They must be protected against unrestricted foreign competition by some sort of prohibitive tariff. My Lord, the use of the handicap is not unknown in races, and why should it be impossible in a race upon the result of which depends the economic fate of a whole nation? The West has not attained to its present industrial development without State help of this kind. Monopoly and protection played an important part in that progress. India is in a more helpless condition today than the West ever was, and the need here for protection in the initial stages is *à fortiori* all the greater. We must have *fair* competition first and *free* competition afterwards.

"There are industries again which by reason of the exceptional difficulties and the uncertainties of profits at the inception may require a greater sponsorial attention, and should be supported with bounties. Here, as in the case of technical, industrial and commercial education, the cost, however large, will only be an investment, yielding an ample return in national prosperity and contentment and the eradication from the land of famine, sedition, and anarchy.

"Reduction in railway freight, my Lord, is another prime necessity for healthy economic progress. The existing scales of freights are a fruitful source of annoyance and trouble. They hamper trade and place artificial difficulties in the way of inland traders in their competition with consignors from foreign countries whose merchandise is brought here over seas at a considerably lesser cost.

"Bulletins issued by the Department of Commerce and Industry, containing elaborate information about industries, machinery, and markets should be very helpful to progress. The disinclination of the Indian capitalist to invest in sound and profitable concerns is to a large extent due to want of precise and reliable information about their financial prospects, the amount of capital necessary, the machinery to be used, and the firms which supply it. This information the Department of Commerce and Industry ought to supply from time to time and circulate freely among the people.

"Government will also be pleased to note the educative influence of Exhibitions, and much can be done in that line by proper encouragement to organisers. The phenomenal success of the Exhibition recently held at Nagpur—principally due to the indefatigable energy and the whole-hearted support of the Hon'ble Mr. Craddock—should be a fillip to local leaders and heads of Provincial Governments.

"Every effort should further be made, every inducement offered, for the remunerative employment of Indian capital. I do not believe in 'the hoarded wealth' of India. That is a myth. But there is some capital in the hands of big men which might with profit be employed to support industrial concerns,

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and the objective of official action should be to set free this locked up capital. A hint from Government will go a great way to give a healthy direction to investment. I do not know what official encouragement will not do in India. The people are hardly responsive to any other stimulus.

"My Lord, notwithstanding its admitted utility, necessity, and commercial success, Irrigation, it pains me to point out, has not received up to now a liberal treatment at the hands of Government. Even the modest recommendations of the Irrigation Commission have not been worked up to; the annual allotments have fallen short of the average, with the net result of a total shortage of 228 lakhs of rupees on four years' working. And when Government is moved for an additional grant sufficient to cover the accumulated arrears, the prayer is refused on the score of impracticability. 'The money could not be spent!' That may be a satisfactory reason from the official point of view, but is singularly unconvincing in view of the extra lavish expenditure sanctioned for the Army and Public Works of at least doubtful utility and urgency. The issues are simple enough: Is the outlay recommended by the Irrigation Commission going to be undertaken, and if so, when is the shortage of past years going to be made up? The decision on the first issue is, happily, no longer a matter of conjecture or debate. The affirmative resolution of Government settles it once for all. The second issue only awaits decision. And in this connection it will be well to bear in mind that arrears are as troublesome an element in Government finance as in private finance, and have a tendency to elude settlement. It is always an unwise policy to allow them to creep into the accounts, and the danger is aggravated where, as in the case of this Government, expenses have a normal tendency to swallow up the income, be this ever so large. Government is almost always more or less troubled for ways and means; its financial difficulties are perennial; hundred things crop up to checkmate its operations. Is it prudent to allow arrears to accumulate in such circumstances? If Government experiences such difficulty in settling a small arrear of 228 lakhs of rupees, what ground for hope is there that it will be in a position to pay off the arrears once they grow and accumulate to larger proportions? The present carries the future in its womb; and if there are elements of prospective trouble in the former, how can they be eliminated from the latter? Even for the next year the allotment is less than the annual average, and that in spite of the enactment by Parliament of special legislation for a maximum loan of £20,000,000 for railway and irrigation purposes. Where is then the guarantee that the arrears will be reduced in the near future, and that the total amount of expenditure recommended by the Irrigation Commission will be incurred within the twenty-year limit?

"And yet, my Lord, there are few countries where irrigation is so very necessary, so pregnant with possibilities for the prosperity of the people as India. Millions upon millions of acres of arid soil, vast expanses of scrub and wilderness, miles of waste and jungle meet one's eyes on all sides, the bulk of which with judicious irrigation can be made to yield food for the millions of the country. The comparative neglect in this matter of irrigation has impressed even foreigners. The following passage from an article on Indian Irrigation by the American statesman, Mr. Bryan, headed 'Money for an Army, none for Irrigation', published in the *New York Sun* in 1907, contains a strong criticism of the Government policy:—

"There are now large tracts of useless land that might be brought under cultivation if the irrigation system were extended. Proof of this is to be found in the fact that the Government of India has already approved of extensions which, when made, will protect 7,000,000 acres and irrigate 3,000,000 acres.....*Ten per cent. of the Army Expenditure* applied to irrigation would complete the system within five years, but instead of military expenses being reduced, the army appropriation was increased more than \$10,000,000 (Rs. 3,00,00,000) between 1904 and 1905."

"My Lord, they are doing great things in the United States of America. Besides other projects, in the Western States alone works now in progress will cost 15 crores of rupees. Even in a country of infinitely lesser resources, Egypt, the Assouan Dam stands pre-eminently high among the great Irrigation

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Works of the world. But in India, with an annual revenue of over 100 crores of rupees, money cannot be found for working up to the modest limit of 220 lakhs of rupees a year, even though Irrigation works pay a handsome profit of over 8 per cent., because, forsooth, what with an ever-increasing Military Expenditure, the Home Charges, the ordinary needs of a complex system of administration, and the expenditure entailed by the adoption of a vigorous Railway programme, the financial capacity of the Government is woefully crippled!

" My Lord, I have heard it said that the Engineering Staff of the Government is inadequate for the execution of an elaborate scheme of irrigation. Supposing it is, the solution of the difficulty is simple. Large works can be done through contractors of established reputation for business capacity. The great Assouan Dam was constructed by a body of contractors, Messrs. Aird and Co. The suggested change in the system of work will afford appreciable relief to the Government, besides ensuring despatch. Is the hope extravagant, my Lord, that Government will yet see its way to carry through the Irrigation programme approved by the Irrigation Commission with energy and spirit ?

" My Lord, Government has no money for the vigorous prosecution of a proper irrigation policy, but is extraordinarily liberal in its outlay on Railways. In spite of universal protest from the people, in spite of the financial straits of Government, money on a lavish scale must be spent on railways ; credit premised, there could be no difficulty for funds. And hence it is that even in an adversity Budget the allotment for railway expenditure is kept up at the high figure of the current year. And the bulk of this amount is going to be raised by sterling loans under the new East India Loans Act, a contingency by itself of sufficiently grave import to Indian finance. In judging of these figures, it should be remembered that down to December last our total Railway Debt, according to the statement made by Mr. Buchanan in Parliament, stood at £176,600,000 out of a total of £246,000,000. But the figures need not appal any one. That is all, in the official language, *productive debt* ! Government makes profit out of the business ! That was the observation made by His Honour Sir Edward Baker in the course of the Budget Debate of 1907, on Mr. Chitnavis's sound suggestion for working the railways by private companies :—

' Our railways do not now impose any burden whatever on Indian revenues, but, on the contrary, afford considerable relief to the taxpayer. Why it should be suggested on financial grounds that we should hand them over to private enterprise I am unable to understand.'

" It would almost seem as if fifty years of Crown rule had failed to divest the Government of the commercial character impressed upon it by the East India Company. My Lord, there are many enterprises which are calculated to prove commercially successful. An extension of the principle underlying the present solicitude for railways would justify Government in undertaking some of these as likely to afford relief to the taxpayer. But would it be contended Government ought to ? Besides, what is after all the net gain to Government ? It is in prosperous years, as pointed out on that occasion by Mr. Chitnavis, about one per cent. upon the Capital charge ! It was much more according to the Finance Minister. The contention was that the net surplus was ' the excess after deducting all charges for interest and annuities ' and did not therefore provide a basis for calculation of profit. But in commercial calculations of net profit the interest charge upon capital has to be deducted, and more. The allowance for depreciation and renewal of block is pretty heavy ; this is absent from the Government accounts. The net surplus can alone supply a correct basis of calculation of net profit. Applying this test, the railways must be taken to have worked during the year at a loss. Indeed, the Hon'ble Finance Minister admits that in the Budget. The receipts have fallen off by $3\frac{1}{2}$ crores of rupees, while the working expenses have increased by two crores, i.e. a total loss of $5\frac{1}{2}$ crores of rupees in one year, a sufficiently alarming aspect of Railway finance that might well call for a halt in further extension.

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"But be the railways ever so successful from a commercial point of view, what is the urgent necessity, what the hurry for a vigorous railway programme? At the end of October last the total mileage of open railways was 30,384. Is that length really so very small for ordinary purposes? One would rather think it was enough. But 'financiers, traders, and Chambers of Commerce' are claimant and their voice prevails. There is the Report of the Railway Commission, recommending 'very strongly a much more energetic railway programme, the reorganisation of the Railway Department in India, and more liberal expenditure of capital on railways'; and, unlike the Report of the Irrigation Commission, it commands the ready assent of Government. Surely a vigorous railway programme is not wanted by the people. But supposing the need for expansion and better equipment of the Indian railways is urgent, it can be best met by private companies and syndicates rather than by Government. Government need not act the sponsor longer. If the railways are a financial success, there cannot be a dearth of capitalists to finance them. The time has admittedly come when the development of the system must be left to private companies. That is the view taken by Sir Henry Kimber, M.P., Chairman of the Board of Directors of the South Indian Railway, in his thoughtful article on 'The Future of Indian Railway Finance' in the *Financial Review of Reviews* of December last. The Mackay Committee, too, recommended the transference of some of the State railways to private companies on judicious terms. I fail to understand, my Lord, why Government, in spite of such weighty opinion, should cling to the old policy of godfathering railway enterprise in India, especially when it impedes development simultaneously with being a fruitful source of trouble to Indian finance. The suggested transference of execution and management will be decidedly conducive alike to economy and progress; the investment of capital will only be circumscribed by the limitations of the money market; and Government, as appellate authority, will have splendid opportunities of enforcing up-to-dateness and excellence in management.

"Two other points demand serious consideration: the better equipment of existing lines for which 'three-fourths or four-fifths' of the capital to be borrowed in England is required ought to be done out of the revenue; and if in the past provision had been made annually and a portion of the revenue had been set apart for this purpose, as is done by all respectable companies, instead of utilising the whole revenue to swell the profits, much of the present embarrassment of Government could have been avoided. I hope, my Lord, this point will receive proper consideration in future accounts. The larger employment of Indian labour on the railways cannot but have a wholesome influence on railway finance. Labour can hardly be said to be employed now with an eye to economy.

"My Lord, the complaint is not new that the Military Expenditure of this country is ruinous to a degree. With the advancement of years, settlement of frontier difficulties, the prostration of Russia after the Russo-Japanese War and the promotion of international alliances, one should have expected the expenditure to go down rather than increase, but the fact is otherwise. The expenditure in the current year is £20,754,400 against £15,029,800 spent in 1899-1900. The increase has been over 33 per cent. in ten years! This large increase has been justified on grounds of efficiency and economy. The outlay, in this theory, is a fee wisely paid for the insurance of the Empire against danger, and will be found really economical in the long run. My Lord, without seeking to subject to profane criticism a policy the details and the merits of which must be especially within the knowledge of the inner circle, several points may be laid before Government for earnest consideration. The insurance is clearly abnormally expensive, the fee paid being fully 28½ per cent. of the annual revenue! Such a lavish expenditure is hardly consistent with sound finance. And yet the cost shewn in the annual Budget does not represent the whole expenditure incurred. Much of the transport work is done by the Imperial Service Troops. This cost as also the cost of the Military Police and the strategic railways are not shewn in the accounts.

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"My Lord, efficiency is a thing singularly incapable of definition. Military authorities are by no means agreed about the utility and the urgency of the Army Reorganisation Scheme. It is difficult to prophesy what the future verdict will be. We have the high authority of Your Excellency for the conclusion that much of the expenditure of preceding periods was so much waste of money. Be that as it may, I have abundant faith in Lord Kitchener's wisdom and far-sightedness. It would be sheer ingratitude to either deny or minimise the brilliant services he has rendered to the Empire. But the Indian Army is much too large compared with the armies of other countries. Is such a large army maintained anywhere else on a peace footing? Sir Charles Dilke, the reverse of an idealist, recently condemned the strength of the army with convincing force:—

'Why was the Indian Army kept up on an extravagant scale as compared with that which England could afford in this richer part of the world, and which was altogether out of proportion to that which she dared to ask the Crown Colonies to contribute? Why should there be a two to one different scale between Ceylon and India?'

"If it be the case that the Indian Army is intended to serve the purposes of an Imperial Reserve, common fairness would demand the payment of a substantial Imperial contribution towards its upkeep. But far from affording relief to the Indian taxpayer, the Imperial Government has proceeded, in the vigorous words of Sir Charles Dilke,

'in the teeth of all the evidence that had previously been produced, against the protests of the Government of India, to increase a charge already indefensible, a charge which we dare not put upon any other portion of the Empire, and appeared to be the deliberate creation, behind the back of Parliament, and without the knowledge of the people of India until it was done, of a new and fresh grievance which might easily have been avoided.'

"My Lord, the whole of this Romer Committee business is indefensible. It is true where the receipts and disbursements are calculated in crores of rupees the additional charge of 45 lakhs might not strike one as particularly ruinous; but the unfairness, the injustice, and the breach of compact involved are too great and too palpable to reconcile public feeling to it. The Welby Commission, after protracted inquiry, laid down once for all definite principles for the adjustment of accounts between the Imperial Government and this Government. Was it open to the Secretary of State, or for the matter of that the Cabinet, to undo the work of that Commission, to resile from the position assigned to the Imperial Government by it, and to create fresh financial obligations for this country? The report of that Commission may have been before the Committee for aught we know. The questions are, was it duly considered? If any of its decisions was modified, on what grounds, with what justification and under what authority was it done? If the matter is so plain, so reasonable, so just, why such reluctance to publish the papers? It will be difficult to resist the inference that the papers, if published, would unfold a tale of melancholy injustice. If anything is in the public interest, the publication of the report manifestly is, and the suggestion it would not be is clearly unsound. The worst feature of the business is that once the Welby Commission Report is disregarded, India is relegated to its former position of utter helplessness against the exactions of the Imperial Government, and one might shudder to think what might yet be in store for us.

"My Lord, the Hon'ble Sir Guy Fleetwood Wilson has explained the differentiation in the treatment of Crown Colonies. Without for the moment disputing the soundness of the position, it may be open to the people to urge that an arrangement which proves so eminently satisfactory to those Colonies from a financial point of view ought to be extended to India in supersession of the present arrangement which leaves her so hopelessly dependent upon the will and power of the Imperial Government.

"My Lord, all praise is due to Government for the generous Scheme of Reform, the *magnum opus* of British statesmanship. The Despatch of the Secretary of State of 27th November last was like a gospel of peace to disturbed

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India, and had at once the effect of soothing the public mind, of inspiring hope for the future, of restoring trust in British statesmanship, British justice, and British sympathy with popular aspirations, of removing discontent, and of rallying round Government the great Indian Constitutional Party, who have ever been its strongest supporters and powerful interpreters to the masses of its benevolent intentions. My Lord, much has been heard of late of this discontent; it has been requisitioned in controversy in justification of their respective views by diametrically opposite schools of political thinkers, from the most uncompromising repressionist to the most liberal and sympathetic statesman. It would be affectation to deny there is, or to be more precise there was, discontent in the land. But discontent among Indians—the mildest, the simplest, the most loyal and law-abiding, the most easily satisfied people in the world—affords food for reflection to the far-sighted statesman. It proves the existence of legitimate grievances, at any rate of unsatisfied desires and aspirations. But British statesmanship has proved equal to the occasion. Government has now dealt a death-blow to anarchism, not by repression, but by liberal political concessions; it must in course of time die of inanition. The publication of the Reform Scheme for the first time during the last three years gave incontrovertible proof of the continuance of that solicitude for the goodwill and the advancement of the people which has ever been associated with British rule in India. Naturally despair was dispelled, confidence was restored, the national heart leaped with joy at the sight of the glorious dawn of a new and brilliant future. Hence the unprecedented jubilation. The voice of discontent is stilled, rancour is drowned in joy. It would be a pity, my Lord, if anything supervenes to check this outburst of national joy. But nothing is better calculated to produce this unhappy result than the action since taken by British statesmen. The introduction of the principle of class representation on the basis of the fancied importance of Mahomedans has at once taken away the chief merit of the Scheme, and given umbrage to the great non-Moslem communities of India. My Lord, I am not a Hindu; I am under no personal obligations to the Hindu; I do not hold his brief; I bear no animosity to the Mahomedan. My remarks are grounded only upon my conceptions of the political necessities of the situation. And I shall be wanting in duty if I do not say that I fail to see the justice and the wisdom of Lord Morley's concessions to Mahomedan demands. Religion is widely apart from politics, and once the religious element is eliminated from the discussion, I do not understand how Hindu interests are opposed to Mahomedan interests in politics. I shall be glad to know what these so-called Mahomedan interests are. I cannot conceive them. It is a mistake to suppose that the bulk of the Indian Mahomedans are separated from their Hindu congeners by any sharp cleavage of race and tradition. In their present backward state they cannot have better representatives than Hindus. Where there are deserving Mahomedans they have as good a chance as Hindus. In Municipalities, Local Boards, District Boards and the Legislative Councils, Hindus and Mahomedans have so far worked hand in hand and shoulder to shoulder in cordial co-operation; there has never been any complaint on the score of ineffective representation, and never any demand for separate election. Even now Mahomedan opinion is by no means unanimous on the point. Why then should this wholly novel and invidious principle of election be introduced into the Reform Scheme, in supersession of a method which has so far produced excellent results, and in disregard of the fact that ample provision was made in the Scheme for the adequate representation of minorities? And what would be the result? Separate representation in all stages must be productive of considerable heartburning among the different communities who constitute the Indian people, will interfere with administrative efficiency, and what is perhaps the greatest of evils, will accentuate and perpetuate racial differences and prevent for all time to come the formation of one united Indian Nation; in other words, will produce results the opposite of what has been the objective of British Indian statesmanship so long.

“My Lord, the question of comparative importance raises important issues and can only be the source of perennial quarrel among the different communities

[*Mr. Dadabhoy.*]

of India. There are communities—the Sikhs, the Rajputs, the Mahrattas—who have each as great a record of past services and past greatness as any in India. The Parsis, about whom such flattering things were said in the House of Lords, and the progressive domiciled Anglo-Indian community are likewise important. Once this contentious and invidious method of representation is accepted, how are the conflicting claims of these various communities going to be settled? If Mahomedans are granted separate representation, with what justice, with what fairness, can the privilege be denied to the other great communities? And where is all this to end in a country like India peopled as it is by a congeries of innumerable sects and races? And is this method practicable? Really this is a step well calculated to damp the popular enthusiasm for the Reform Scheme. Add to this elimination of statutory provision for the creation of Provincial Executive Councils with the resultant prevention of the popularisation of Provincial Administration, and I should not be surprised if the popular feeling oscillated back to the point from which it turned to greet with such genuine enthusiasm the Reform Scheme. That would be a disaster. My Lord, the action of the House of Lords is viewed by the people with keen and bitter disappointment, and some of the reasons advanced by noble lords opposing the measure have caused them great distress. My Lord, the people have just cause to resent their wholesale condemnation on the grounds of unfitness and incapability of impartial and dispassionate criticism in spite of their proved capacity and impartiality in difficult and delicate spheres of action. But they have one consolation: They feel they have in Your Excellency a champion of their cause, who will do all in his power to ensure them a bright future. I hope, too, the Provincial Governments will rise equal to the occasion, and by the weight of their favourable opinion facilitate the reinsertion of the deleted clause in the India Councils Bill. The people attach great importance to it, and nothing will satisfy them except its reinsertion. Mahomedan opinion coincides with Hindu opinion in the demand; the voice of the nation is unanimous. What is the danger, my Lord, in having a clause of that kind? It seeks only to vest a certain discretion in this Government which is absolutely necessary in view of the engrossing work of Parliament and its want of leisure to deal with Indian matters with that promptitude which their importance demands. Government may be trusted to use the discretion with care and proper consideration of local conditions and in consultation with the Local Government concerned. Why then the meaningless opposition to a wholesome provision? The Decentralisation Commission also recommends the reform.

“My Lord, from the generous spirit in which the Reform Scheme has been conceived and the expression of official conviction that we ‘shall never again have the combination of a Viceroy and a Secretary of State who are more thoroughly in earnest in their desire to improve Indian Government, and do full justice to all bodies of the Indian population,’ one would expect that, with a view to ensure the pursuit in future of the same liberal policy, all the comprehensive reforms should be placed on a firm statutory basis. The policy, my Lord, of leaving important details of administrative reform to be settled by regulations is of doubtful wisdom. Regulations, however high the source, have not the authority, the force, and the permanence of a Parliamentary enactment, and are liable to be rescinded at Executive will. So long as the happy combination continues there need be no fear; but when we have an unsympathetic Executive—by no means an unlikely contingency—the rights and the privileges secured by regulations may be considerably whittled down for no fault of the people. My Lord, not long ago even Her Gracious Majesty Queen Victoria’s Proclamation of 1858, stamped as it is with Royal imprimatur and invested with the authority of age, was sought to be expunged away in this very Council. What is the guarantee then that mere regulations will command greater respect in future? It will be a wise policy to have all the important concessions so generously proposed to be granted to Indians by the Reform Scheme well and truly laid upon a solid bedrock of legal provision.

“My Lord, in any general scheme of reform provision ought to be made for, what is technically known as, the separation of Judicial and Executive

[*Mr. Dadabhoy ; Mr. Andrew.*]

Functions and the appointment of trained lawyers as District and Divisional Judges. My Lord, after the Hon'ble Sir Harvey Adamson's clear pronouncement on the subject in this Council on 27th March 1908, the public expectation ran high, and it looked as if Government had finally made up its mind to introduce the much-needed reform of the separation of the functions. The Hon'ble Member's reply to my question on 5th February last, however, has disappointed hopes. Will it not be wise to push this reform if only with a view to conciliate public opinion? May we hope to have the chance of associating this reform with Your Excellency's honoured name? The wisdom of the other reform will doubtless suggest itself to Your Excellency. It is every way desirable that the administration of justice in the interior should be in the hands and under the control of trained lawyers. The popularity of Government largely depends upon the administration of justice, and too much care cannot be taken to place it above suspicion and to secure for it popular confidence.

" My Lord, the Government reply to my question about the creation of a Legislative Council for the Provinces I have the honour to represent in this Council is disappointing to a degree. The abandonment of the scheme of Advisory Councils leaves the only alternative of a local Legislative Council for the 'assistance and support of public expression of views on public affairs' which the Hon'ble the Chief Commissioner desires to have. The Hon'ble the Chief Commissioner, in his admirable Note on the Government of India's Reform Proposals, further admitted that a local Legislative Council was demanded by 'advanced public opinion.' Why then should the proposal not find favour with Government? The measure cannot surely be productive of harm. Your Excellency will pardon the freedom of their representative if he takes the liberty to point out that the people of the Central Provinces and Berar have been left in the cold shade of neglect in the Reform Scheme. In the bountiful shower of gifts they only have been overlooked. Even the right of election enjoyed by the other Provinces has been denied to them. When all Indians elect their own representatives to the Legislative Councils they alone must remain satisfied with nomination. Surely the Central Provinces and Berar have sufficient enlightenment and public spirit to deserve this right? May not they then expect the concession? The bigger Municipalities and District Councils, at any rate, can be expected to soundly exercise the right.

" My Lord, the first step in the Reform programme has already been taken by the appointment of an Indian to the Executive Council of the Government of India. We hail with pride and joy this announcement, and I take this opportunity of expressing the country's gratitude to Your Excellency on this appointment. I congratulate the Government of India on the excellence of its choice, and I also offer the nation's greetings to the recipient of the honour for the noble sacrifice he has made to serve his country.

" All told, my Lord, the year has been one of steady progress. Trouble and tribulation, anarchy and repression, punitive police and drastic legislation, secret plottings and deportations have darkened the sky; the ship has tossed and lurched in the storm; but the captain has been vigilant all through; the port is at last within sight. And when the history of the past three years comes to be written, Your Excellency will occupy the foremost place in it as a statesman who, with a heritage of trouble and difficulty that might well daunt lesser spirits, with vision unclouded by passion or prejudice, with rare courage, through good report and evil report, has worked unweariedly for the good of the millions placed in his charge, and by wise and timely concessions has consolidated the foundations of the Empire and fixed it firm on the affections of a grateful nation."

The Hon'ble Mr. ANDREW said:—" My Lord, while I regret the necessity which compels the Hon'ble the Finance Member to adopt a policy of retrenchment I must refer with gratification to the fact that the Government of India in fixing the Madras estimates for 1909-1910 have not made any material alterations in the Budget submitted. I learn with satisfaction that Madras will

[*Mr. Andrew.*]

realize a surplus in this year of general financial depression, but I note with some concern the remark in the Financial Statement (paragraph 142) that the Provincial balance is considered ample. It is true, my Lord, that the current year is expected to close with a balance of 114 lakhs, and this is due in large measure to that tradition of economy and careful management which the Hon'ble the late Finance Member in the last Budget debate said had long characterized Madras administration, and which has led to caution in embarking on promising schemes, involving considerable initial and recurring expenditure until such arrangements could be made as would ensure in the long run the fullest regard to efficiency and economy. My Lord, though the balance is comparatively large, the Government of Madras foresee no lack of works and schemes of permanent utility upon which to expend it, not forgetting that in utilizing balances they have to be careful to select objects which will not entail recurring expenditure beyond their normal resources. The development of agricultural, industrial and technical education, and of reforms in the Forest and other departments will impose contingent charges for which it will be necessary to draw largely upon the balances. The high prices of food-grains have necessitated the grant of compensation to Government servants which in the current financial year will amount to about 12 lakhs under Provincial heads alone, and this drain upon the balances may have to be continued in the coming year longer than was anticipated.

"My Lord, last year the Hon'ble the then Finance Member held out hopes of relief to the Bengal Government, on the return of favourable times, in respect of grain compensation, in consideration of the facts that no provision was made for it in the Provincial settlement and that it amounted to 9 lakhs, and I trust that the Hon'ble the present Member may see his way to holding out like hopes to Madras which also has, I think, claims in each of these respects.

"I would urge, my Lord, that expenditure of this sort, in so far as it may be considered the result of famine, should be met out of the annual assignments made to Local Governments under the arrangements detailed in paragraphs 48 to 57 of the Financial Statement for 1907-1908.

"May I express the earnest hope, my Lord, that early orders may be passed soon on the scheme for the revision and redistribution of District and Divisional charges, a reform which is urgently called for in the interest of efficient administration? The report of the Decentralisation Commission and the reform proposals now under discussion will shortly result in an enormous addition to the labours of district and other officers who were already in need of relief when Mr. Meyer formulated his proposals some years ago.

"I should like to draw Your Lordship's attention to the unsatisfactory position in which District Boards in the Madras Presidency stand in regard to Railway enterprise. Up to the present over 150 miles of railway have been constructed by these Boards at a cost of over 70 lakhs; and the Railway Cess levied in ten districts under Madras Act VI of 1900 has accumulated to an amount sufficient to construct 60 or 70 miles, while the annual revenue arising from the incidence of the tax would suffice to raise in the open market a capital sufficient to construct about 200 miles of railway. Besides this, the Tanjore District Board—described by the late Viceroy as the pioneer of local railway enterprise in India—sets aside annually a large proportion of the net earnings of its railway for the purpose of further construction, and if this practice is pursued, as it doubtless will be, by other Boards when the lines projected by them are earning surplus profits, they will be in a position to raise further capital for other branch lines. The money thus accumulating cannot be diverted to other purposes, and District Boards are anxious to proceed with the work of railway construction but are discouraged by the decision of the Secretary of State that lines constructed from loans obtained by a Local Board from Government fall under the Imperial programme of railway construction.

"My Lord, it is hopeless to expect any steady progress in lines of the class contemplated if Local Boards are subject to the restrictions imposed by the

[*Mr. Andrew ; Mr. Macleod.*]

Secretary of State as they are by their nature of secondary importance from the Imperial point of view, though of the greatest importance locally. As an instance I may mention the Bezwada-Masulipatam line which was constructed by means of a loan from the Provincial Loan Account just before the Secretary of State's ruling was issued. This line, which was opened for traffic only a year ago, is already earning $7\frac{1}{2}$ per cent. and is of the greatest benefit to the district, and brings in, I imagine, a considerable amount of traffic to the Madras and Southern Mahratta Railway, while the Provincial Loan Account is making 4 per cent. on the loan. Had this line not been built before the Secretary of State's ruling was issued it would have had to be included in Imperial programme, and its construction would have been deferred in all probability for years to the loss of the district and probably also of the parent line. I would therefore urge, my Lord, that the Secretary of State be moved to modify his ruling in such a way as to permit some small definite loan, say up to 15 lakhs, being made annually from the Provincial Loan Account for the construction of railways by Local Boards without including them in the Imperial programme.

"Another discouragement under which District Boards in Madras labour arises from the difficulty and delay they experience in obtaining satisfactory terms for the construction and working of the projected lines from the South Indian Railway Company. It may be that the interests of a Railway Company would in some instances be better served by postponing indefinitely the construction of a line—however desirable in itself—with a view to its eventually becoming an integral part of its own system, but such a line of action, however reasonable from the point of view of the Company, would not be justifiable in view of the encouragement given to District Boards to tax themselves in order to obtain facilities for railway construction. I would specially mention the case of the Tinnevely-Tiruchundur Railway, about which negotiations have been proceeding for over $2\frac{1}{2}$ years, and I would press, my Lord, for early and satisfactory settlement of terms between District Boards and the Railway Company."

The Hon'ble MR. MACLEOD said:—"My Lord, while the greater part of the civilized world has been passing through a most serious depression in trade, it was hardly to be expected that in India the revised estimates for the current year should show anything but a deficit. This deficit has unfortunately been increased owing to the fact that the unfavourable conditions which existed in the previous year have had more far-reaching consequences than could have been foreseen when those estimates were framed. On the other hand, duty has been paid this year in Bombay on nearly 20,000 chests of opium in excess of the permissible export so that well over a year's revenue from this source has been received in advance. The Hon'ble Finance Member must therefore be congratulated on having the courage to base his estimates for the coming year on existing sources of revenue without increasing taxation.

"Further, the Financial Statement is calculated to inspire confidence. The Chambers of Commerce will note with satisfaction that Government are intent on building up our stock of gold. A few months ago when the balance of trade set against India and merchants were clamouring for gold it was said that if they had only known they could get what they wanted, they would not have needed to ask for it. It was the fear that they could not get it that dominated the situation. The conversion of the unfortunate 3 per cent. rupee loan must tend to strengthen the credit of Government and again the Chambers of Commerce are to be congratulated on Government having acceded to their request, while it cannot be said that the terms offered to the holders of this loan are unreasonable. The fact that the amount available for Railway development has had to be reduced by $2\frac{1}{2}$ millions below the amount recommended by the Committee on Indian Railway Finance emphasises the necessity for enlisting private enterprise. I cannot quote a higher authority on this question than the Hon'ble Mr. Proctor, who recently in his address as retiring Chairman at the Annual Meeting of the Bombay Chamber of Commerce pointed out that Government must reap considerable benefit

[*Mr. Macleod ; Raja Sir Ali Muhammad Khan.*]

by encouraging local private enterprise; that it would enable feeder lines to be built long before they otherwise would be if they were to take their place in the Government programme; that the construction of these lines would bring more land into cultivation and that by attracting rupee capital Government would so far prevent an increase of the gold indebtedness and would afford the people of this country an opportunity of having a stake in its welfare and development. These arguments seem unanswerable. And while I am dealing with railways I should like to draw the attention of Government to the complaint of the Chairman of the Bombay Chamber of Commerce that they do not know to whom to go for expert information and advice, now that the post of Consulting Engineer to Government has been abolished and apparently the post of Secretary to Government in the Railway Branch as well. Bombay has frequently complained in the past that in spite of the whole-hearted support of the Local Government her claims to be heard on the question of railway development have not been given that consideration to which by reason of her position and trade she is entitled, and so it is to be hoped that the situation will be watched and that if the delay, inconvenience and constant misunderstandings now apprehended by the Chairman of the Chamber are actually caused by this change, a remedy will be found.

"It is satisfactory to note that it is possible to allot in the coming year the full moiety of the Famine Relief and Insurance Grant for expenditure on Protective Works, but the Financial Statement appears to be silent as to how the allotment will be distributed. There must no doubt be degrees of urgency, but the works which are destined to relieve certain districts in the Deccan plateau in which famine is almost chronic deserve very great consideration. I understand that a new system has been devised for these districts which, it is hoped, will induce a more constant demand for water for irrigation from the cultivators and thereby reduce the loss which usually results from protective works when the monsoon rains are plentiful. If this can be done, there is all the greater necessity for allotting sufficient funds for the completion of the Deccan schemes within a reasonable time. Lastly, those persons who have been recently exhibiting a somewhat pardonable curiosity as to the results of the labours of the Stores Committee appointed in 1906 will be gratified to find that directions have been received from the Secretary of State which should prove beneficial to local industries."

The Hon'ble RAJA SIR ALI MUHAMMAD KHAN said :—"My Lord, the anxiety which prevailed as to the character of the budget before it was laid on the table has not been much relieved by its perusal. But I find that deficits are the order of the day all over the world. The revised estimates show a deficit of 5½ crores as against the surplus of 86 lakhs budgetted by the Hon'ble Sir Edward Baker. The causes which have contributed to the financial depression appear to be such as could not have been foreseen and over which Government had no control. I am however glad that the Hon'ble Member for Finance has been able to budget for a modest surplus of 35 lakhs next year and congratulate him on the courageous manner in which he has met the situation as well as on the wisdom of the course which he has followed in not resorting to increased taxation. The shadow of the famine has not disappeared from my province yet and it is always more or less associated with other forms of suffering. In August last we were visited by an epidemic of malarial fever unprecedented in its severity. The epidemic lasted till the end of December and claimed a far heavier toll of human life than any epidemic of plague in previous years, the total number of deaths amounting to over thirteen lakhs. Sir John Hewett, with his characteristic foresight and energy, caused an inquiry to be instituted into the causes of the outbreak; but no satisfactory results have been arrived at yet. So widespread was the epidemic, that agricultural operations came for the time being to a standstill, and when they were resumed the sowing of the spring crops was much delayed. The area sown was comparatively small and owing to the partial failure of the winter rains the outturn of the rabi cannot be estimated at more than 85 per cent. of the normal in the larger part of the provinces, while in the north of

[*Raja Sir Ali Muhammad Khan.*]

Oudh things are much worse. Conditions such as these cannot be deemed favourable to a decrease in the price of food-grains, and the extraordinary disturbance of economic conditions which we have witnessed of late is not likely to disappear at an early date. In reply to a question put by my Hon'ble Colleague Mr. Dadabhoy at the meeting of the 15th January last, with regard to the abnormal rise in prices, the Government were pleased to say that the subject was engaging their careful attention. I am afraid the Hon'ble Member for Finance is too sanguine when he anticipates an appreciable fall in prices as a consequence of 'a favourable agricultural position' as experience has belied such expectations in the past. The question is becoming one of extreme gravity for the middle classes, and though I recognise its complexity, I trust that this consideration alone will not deter the Government from instituting a thorough enquiry. I may mention that His Honour the Lieutenant-Governor of the United Provinces has announced his intention to summon a conference during the monsoon of this year to consider what action can be taken by the Government in connection with the rise in the price of milk and ghee. It is time that the question was made an Imperial one.

"My Lord, I have read with satisfaction paragraphs 43 and 44 of the Financial Statement which announce the decision to abolish the special grant to the army and to restrict the limits of military expenditure. But the present year appears to me to have been most unsuitable for the increase in the pay of the Indian Army. It is true that a slight reduction has been effected in the budgetted expenditure of the current year, but the figures for the next year show an increase of 23 lakhs. So far the expenditure has gone on increasing year after year, as a comparison of the figures which I give below will clearly show :—

| | £ |
|---------------------|------------|
| 1899-1900 | 16,168,763 |
| 1900-1901 | 16,365,886 |
| 1901-1902 | 17,222,495 |
| 1902-1903 | 18,852,283 |
| 1903-1904 | 19,540,667 |
| 1904-1905 | 21,906,377 |
| 1905-1906 | 21,056,411 |
| 1906-1907 | 21,587,103 |
| 1907-1908 | 20,415,787 |
| 1908-1909 | 20,557,700 |
| 1909-1910 | 20,708,200 |

"It has risen by 13 crores or 28 per cent. during the past 10 years. The need for a retrenchment in this direction has been urged in this Council before by much abler men than myself, but I may be excused for making a reference to a matter which is cognate to the question at issue. I mean the Ecclesiastical charges of the Army. They do not only show a considerable rise during the same period, namely, from 1899 to 1910, but I submit that they need not form a charge on public revenues at all. It seems to me to be opposed to the well-defined principles laid down by Government themselves that they should take no part in matters of religion, be it of the ruling class themselves. If they recognise the obligation to provide facilities of religious worship for the British soldier, the other classes of people represented in the Army have a right to make a similar demand. It is hardly justifiable that any portion of the revenues contributed by people of diverse creeds should be devoted to the spiritual well-being of the British soldier. I think his religious welfare can well be left to Missionary societies instead of being made an item of charge on the general revenues which are already heavily burdened with an excessive and ever-growing military expenditure.

"But I am chiefly concerned with the effect which the present situation has on the finances of my province. They were reduced to a condition verging on bankruptcy, and if the Imperial Government had not come to the rescue of the Local Government by making a special assignment of 41 lakhs to restore the minimum closing balance, the latter would have closed the year with a deficit

[*Raja Sir Ali Muhammad Khan.*]

balance of 21 lakhs. My Lord, I am thankful for the assistance given to the Local Government by the grant of 4 lakhs for Police Reforms. It is also gratifying to learn that the new Provincial settlement has been concluded, but I would respectfully submit that it does not much improve the financial position of the Local Government. The province was parsimoniously treated in the past; the standard of expenditure kept in sight was low and its needs were not fully recognised. The result was that it remained comparatively backward in all respects and there is vast ground to make up in consequence of the policy pursued in the past. The grant of 10 lakhs which has been made to the province is earmarked for the new hospital to be attached to the medical college at Lucknow. There is no initial assignment to enable the Local Government to carry out the much-needed educational and medical reforms. It will be impossible for it to meet the many pressing needs unaided in order to bring up the province to the standard of other advanced provinces unless the Government of India extend their generosity in future as they did this year in order to relieve the stress caused by famine.

"My Lord, it will not be going too far to say that of all the problems which affect the welfare of India, there is none of greater moment (next to its peace) than education, but there are no improvements which are so often relegated to an indefinite future as those connected with it. The Progress Report of Education in India, 1902-1907, which has just been issued is a record of substantial improvement if compared with the period which preceded the quinquennium. It shows a considerable increase in primary schools both in number and strength, but it is admitted that the increase is not proportionate to the demand. A similar tale is told by the report on Public Instruction in the United Provinces for the last year. It records an increase of 172 in the number of primary schools and of 41,847 in that of scholars. 'But speaking generally,' says the report, 'the supply of educational facilities has been unable to keep pace with the demand.' While acknowledging gratefully the efforts which have been made by Government in the expansion of primary education and in raising the level of education in general, I submit that they have proved inadequate. The absence of provision in the next year's budget of the cost of free primary education is apparently to be accounted for by the present state of finances. In my opinion the importance of the task exceeds its magnitude and difficulty, and I earnestly hope that the realisation of the prospect which was held out in 1907 will no longer be delayed when easier financial conditions prevail. As regards secondary education in the United Provinces, it calls for urgent reforms which mean increased expenditure. The schools are generally badly equipped. The furniture, such as there is, is a disgrace to modern carpentry; the apparatus for teaching is insufficient and accommodation inadequate. There is everywhere a cry for new buildings and additional classes. The inefficiency of the teachers is in keeping with the low rate of pay offered to them. The resources of the district boards are severely taxed and yet they cannot find sufficient room for the scholars seeking admission to vernacular schools. The keen interest taken in all forms of education by Sir John Hewett has led to the introduction of certain improvements. Of these the conversion of the High Schools at the head-quarters of the districts into Government Model Schools is a necessity which cannot be long postponed, but the proposal has not been given effect to for want of funds. My Lord, the resources of a provincial Government are limited and even under normal conditions it cannot cope with the demand which is being made upon it now for the spread of education. It will be a sad thing to crush the demand for English education which is growing everywhere through lack of encouragement. There is room for economy in other directions but to effect economy at the cost of education means a check in the moral and material growth of the country. My Lord, when the opportunity comes the grant of additional expenditure for carrying out the improvements in secondary education will be a great boon to the people of the United Provinces, and I strongly hope that their requirements will not be forgotten. I may add here that a great impetus has been given to industrial and technical education in my province by Sir John Hewett. The reluctance which characterised the educated middle classes formerly in availing themselves of the advantages of such education is fast disappearing and

[*Raja Sir Ali Muhammad Khan.*]

commerce and industry are taking a higher place in their estimation, I venture to hope that the proposals for the establishment of a technological institute in the United Provinces when sanctioned by the Secretary of State will receive the financial support of the Government of India. The problem which is staring the Government in the face is that of devising means for the provision of industrial and technical education in the country on a large scale. I sincerely trust that the situation will be faced in a liberal spirit as times permit.

"My Lord, I may be allowed to say one word in regard to railway construction. I believe that Government is not unaware of the fact that a series of collisions occurred during the last year on different railway lines. The most appalling of these accidents took place at Dasna in Meerut District in the beginning of the hot weather. It resulted in an unusually heavy loss of life and property and was the subject of a protracted Government inquiry. The Railway Board came to the finding that it was an 'act of God'. My Lord, if human foresight can avert such dangers without shifting its responsibility to higher powers, I think the fact should not be blinked. The chances of a collision are extremely minimised where there is a double line. In the interest of public safety I would urge the necessity for the doubling of the line on the Oudh and Rohilkhand Railway and would suggest that the work may be included in the programme for raising the standard of the existing railways.

"My Lord, I now come to a subject on which a great deal has been said before and to which I can add nothing new, but my excuse for referring to it is the fact that it threatens to become a standing grievance. I mean the Asiatic difficulty in the Transvaal. Matters have not advanced much since the decision of the Transvaal Government was announced in the House of Commons by the Secretary of State for India on 31st January 1908, in regard to the registration of Indians. The position of the British-Indians in the Transvaal reminds one of the position of Jews in ancient Europe when every attempt was made to extirpate them from the face of that country. The problem with which the Indian Government is confronted is not merely how to reconcile the claims of the Indians as citizens of the Empire to settle in a self-governing colony; but in it is involved the larger and more important issue of the relations of the white to the coloured races in general. The treatment which the Indians are undergoing there is a reflection on the white race and is a source of great irritation to the people of this country. Their recent deportation from South Africa has afforded a fresh cause for excitement. In my humble judgment a thorough overhauling of the whole question of Indian migration into British Colonies is extremely desirable. I would respectfully suggest that as trustees of Indian interests, Your Lordship's Government will keep pressing on His Majesty's Government the necessity for the removal of those restrictions which are debasing to the Indians in the Transvaal and excite feelings of bitter resentment in this country.

"My Lord, speaking at this time last year the Hon'ble Sir Harvey Adamson announced the intention of the Government of India to give a trial to the separation of the judicial and executive functions in the two Bengals. The results of this experiment will be watched with close interest in other parts of the country. I can realise fully the financial difficulties which are in the way; but I hope that the importance of the question will not be lost sight of as soon as the pressure has diminished.

"My Lord, I cannot conclude without a retrospect of the violent unrest which we have lately experienced. There were moments when we seemed to be standing on the brink of a disaster owing to the frequent display of brute force and to the 'arrows that flew in the dark,' probably the work of a misguided few. To uphold the authority of law, to soothe the public mind which was in a state of tension, and, at the same time, to formulate a scheme for constitutional reform, were the trying tasks which befell Your Lordship's Government. Never before has a Government placed under similar circumstances faced so difficult a situation with such a remarkable success. At the commencement of the present session, Your Lordship's Government was forced to resort to coercive legislation. When I supported the Summary Jurisdiction Bill I did

[*Raja Sir Ali Muhammad Khan ; Nawab Saiyid Muhammad.*]

not do so merely because it was a measure emanating from Government, but because I was convinced that it did not in any sense indicate a departure from the fixed policy of peace and progress which has characterised Your Lordship's Government. That repression was necessary at the time, later events have fully demonstrated; and that I was not wrong in judging the scope of Government action, is proved by the fact that the new law has not been applied wholesale. The close of the year saw the promulgation of the long-awaited reforms which were received with a feeling of intense relief and to quote the words of Lord Morley with 'various degrees of approval'. Harmony is often evolved out of chaos. So the reforms may be said to have brought peace and good will with them. As an Indian member of this Council, I desire to express my deep gratitude for the generous recognition of an extended right of representation and for Your Lordship's benevolent solicitude for the welfare of the country. Opinions may differ as to details; but no one can fail to appreciate the liberal spirit underlying the reform scheme and the new era of possibilities which it bids fair to provide. Destructive criticism in any quarter, at this stage of affairs, cannot but be productive of more harm than good. I hope at least that we have no 'Adullamites' at the present moment in this Council. My Lord, we are entering upon a new and important phase of administration. The best qualities of the head and heart will be called forth on the part of those who have to give practical effect to the proposed reforms as well as on their part who have to prove themselves worthy of higher responsibilities. If the efforts on both sides are sincere, they will be crowned with success. With regard to the deletion of clause 3 of the India Councils Bill by the House of Lords, Your Lordship's Government has justly recognised the necessity for creating Executive Councils in provinces where their existence may be justified by circumstances and the action of Your Lordship's Government in expressing its adherence to the provisions contained in the clause in question has given satisfaction. I take this opportunity of congratulating my countrymen on the appointment of the new Law Member and of thanking the Government for having made a concession to merit. The people of other provinces might well lay this example to heart and strive to come up to the level of educated Bengal. My Lord, I cannot here help asking myself whether political concessions will bridge over 'the tremendous chasm' that separates the rulers from the ruled? If I understand rightly, the superiority of the white to the coloured races consists in the moral uplifting of the latter by the former. It is a noble task, but it cannot be achieved through political machinery alone. It is a healthy sign of the age that the evils of aloofness between Europeans and Indians are being recognized on both sides. But the advances must be mutual. I would ask my countrymen to rise equal to the occasion and would appeal to the ruling class to meet us half-way. If the day ever comes, when racial prejudice has ceased to affect our mental vision; when colour is no longer recognized as the stamp of moral and social inferiority; when the Indian learns to realise that a bond stronger than that of territorial subjection exists between him and his rulers; when official restraint has given way to a free interchange of ideas; when want of confidence is displaced by a better understanding; when the call to duty meets with a true response on one side and real grievances evoke genuine sympathy on the other, it will be the Reform of Reforms."

The Hon'ble NAWAB SAIYID MUHAMMAD said:—"My Lord, the Hon'ble the Finance Member deserves our genuine sympathy in the very difficult task he has been called upon to undertake. He has had to frame what has been called an adversity budget—the first of its kind since 1897-1898. During the decade that has produced what is called prosperity budgets, one sees much unnecessary expenditure and in spite of solid achievement in remission of taxation—with which the name of the Hon'ble Sir Edward Baker will be honourably associated—the feeling has been encouraged to grow up that every budget is bound to bestow largesses, grants and so forth. That, my Lord, is in the highest degree demoralising. 'The ideal of State economy,' as Bastable in his famous work on 'Public Finance' says, 'is, on the contrary, to establish a balance between

[*Nawab Saiyid Muhammad.*]

receipts and expenditure. A State that has very large surpluses is as ill-managed as one with large deficits. The practical rule is to aim at a slight excess of receipts over outlay in order to prevent the chance of a deficit. The position of the State as drawing its resources from the contributions of the several private economies under its charge is the reason for this course of conduct.' That leads me, my Lord, to quote the wise observation of Sir James Wilson that finance is not mere arithmetic, but a great policy. 'Without sound finance, no sound government is possible; without sound government, no sound finance is possible.'

"My Lord, as we are at the beginning of a great era which would undoubtedly tend to strengthen sound government in India let us earnestly trust that we are also going to have sound finance, and I am indeed glad to see indications of sound finance in the rigorous pronouncement of the Hon'ble the Finance Member in favour of retrenchment of expenditure. I sincerely hope this pronouncement is not wrung from the Hon'ble Member simply because he is confronted by a large deficit and that under different conditions he will not lapse into the habit of seeing in increased expenditure an incontrovertible proof of growing prosperity. Addressing this Hon'ble Council in March 1907, I ventured to state: 'The relief to the tax-payer can be but temporary unless the Government enters upon a bold policy of retrenchment. So that the reduction of revenue which we anticipate may be met without embarrassment.' . . . 'The claims of the services are insistent and oftentimes overpowering. But the new situation forced on the Government—I refer more especially to the possible extinction of our opium revenue—indicates the path along which progress must be made, so as to bring revenue into reasonable correspondence with expenditure. The curtailment of expenditure, especially on the services, is both a political and a financial necessity.' My Lord, this time there is no relief to the tax-payer; rather the Hon'ble the Finance Member is disposed to take some credit for not asking for a rupee of extra taxation and for meeting his difficulties by retrenchments. If I may venture to say so, these retrenchments are but temporary expedients. To do the Hon'ble Member justice, in the concluding paragraph of his Budget Statement I find him saying that he can 'see no reason why, with a due regard for economy, favourable harvests and a period of peace, we should not look forward to a return of that prosperity which has characterised former years.' Let me lay stress for a moment, my Lord, on due regard for economy. That, at any rate, is not beyond the control of Government. As the Hon'ble the Finance Member tersely puts it, estimating in this country is largely a gamble in rain. All estimates have necessarily to be based upon a normal rainfall, but no two years have passed in succession in which the rainfall has been really normal. Even at the present moment there is distress in parts of the country and relief works have been opened. This is as regards estimating revenue. But estimating expenditure is largely a matter of prudence and foresight. 'Let us spend while we may, and let us retrench because we must,' does not seem to be the acme of financial wisdom. Assuming, however, that the monsoon will not fail in the forthcoming year and there will be a normal rainfall, that alone will not restore the equilibrium of Indian finance unless there is a general improvement in trade so that the railway receipts may not again fall short of the estimates. As regards the collections of arrears and suspensions of land-revenue, these again are dependent upon a seasonal and normal rainfall. On the whole the Hon'ble Member takes the right view of the situation when he says that it would be clearly imprudent to speculate on too rapid a recovery in revenue.

"My Lord, I venture to call attention to the enormous increase in administrative charges in recent years. Not all these increases can be justified. Mr. Parnell in his well-known work on 'Financial Reform' says: 'Each public department stands prepared to give the most confident reasons why it is absolutely necessary to keep up the scale of its expenditure to the exact point at which it now is.' Speaking on the Budget two years ago, the Hon'ble Sir Edward Baker—whom it gives me sincere pleasure to see as the Lieutenant-Governor of Bengal—said: 'I have now been connected with the Finance

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Department of the Government of India for five years continuously, and during the whole of that period I do not believe that a single day has passed on which I have not been called upon officially to assent to an increase of pay of some appointment or group of appointments, to the reorganisation of some department or to an augmentation of their numbers. All experience proves that wherever revision is needed, either of strength or emoluments, the Local Governments and the Heads of Departments are only too ready in bringing it forward. Nor are the members of the various services at all backward in urging their claims.' And His Honour concluded: 'I cannot in the least recognise the necessity for imparting an additional stimulus to this process. On the contrary, I believe that all that is necessary is continuously being done. In this view I welcome the remarks of the Hon'ble Saiyid Mahammad, though I am not very sanguine that the urgent needs of India will permit of any actual reduction.' I submit, my Lord, this subject deserves to be carefully inquired into, for we are on the eve of great changes, probably necessitating increased expenditure. It is a matter for the consideration of Your Excellency's Government whether it is not time that small departmental committees were appointed to go into the whole question. It is a pleasure to me, in this connection, to note that the Decentralisation Commission points out in paragraph 432 of their Report how the Secretariat establishments (both Imperial and Provincial) have grown in bulk unnecessarily. The Commission, while admitting that the increase in establishments represents increase of work which is inevitable in consequence of the material, intellectual and political advance of the country bringing up new questions or necessitating the reconsideration of old ones, emphasise the fact that there has been an unmistakeable tendency on the part of all Secretariats to interfere in unnecessary detail with the action of the authorities subordinate to them. In this direction and in many other which I need not dwell upon, considerable reduction of administrative charges can and ought to be made. The necessity for retrenchment is emphasised not only by the growing contraction of the revenue from opium and any mere temporary embarrassments of Government but by the fact repeatedly dwelt upon by the Decentralisation Commission that 'the growing material, intellectual and political advance of the country' has brought up new questions or necessitated the reconsideration of old ones. New developments in education have recently been suggested; in fact, we want a fresh stimulus imparted to every branch of educational work. Free primary education is in a state of suspension for want of funds. Local Governments who had shown commendable zeal in submitting proposals for the development of secondary and collegiate education have precipitately withdrawn their proposals, when they found what their educational reforms would cost. Throughout the country there has been a cry for industrial education and 'industrial surveys' have been officially undertaken and industrial conferences held for the consideration of questions bearing upon the industrial future of the land. It is evident that things cannot remain where they are,—all these surveys and conferences must yield some practical results. Funds are urgently wanted for these objects, and funds should be found for them, for the Government cannot afford to ignore the growing demands of the country in this respect.

"The Hon'ble the Finance Member has refrained from making any specific reference to the question of sanitation. The small grant made last year for this object has not been renewed this year, although there is an increase in the medical charges, to provide for 'a more active programme of sanitation'. There is perhaps no problem comprised in the vast range of problems connected with rural prosperity so important as the problem of improved sanitation. In paragraph 3 of the Financial Statement the Hon'ble the Finance Member refers to the recent deplorable outbreak of malaria in Northern India, 'which caused considerable mortality in some tracts and greatly debilitated the agricultural population, hampering the harvesting of the autumn and the sowing of the spring crops.' That is adequate testimony to the importance of the careful consideration of the subject. Hence, the

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supreme necessity, even from a purely financial point of view, of taking measures to organise sanitary works on a large scale. This problem of rural prosperity must be solved, and its solution depends almost entirely upon the Hon'ble the Finance Member's ability to provide funds.

"That leads me to consider the Hon'ble the Finance Member's budget proposals. In framing his budget the Hon'ble Member says:—'The result has been a sharp arrest of expenditure, both Imperial and Provincial, at no small discomfort to ourselves as well as to Local Governments, and in some cases at a temporary sacrifice of administrative efficiency.' The Hon'ble Member then says:—'But the only alternative was increased taxation, and this, in our opinion, would have been a greater evil.' After more than ten years of unbroken financial prosperity and large surpluses it would be scarcely wise to meet the first appearance of financial adversity by an enhancement of taxation. Recognising the discomfort both to the Supreme and the Local Governments, there can be no question that the wiser and more statesmanlike course has been adopted. But a condition of finance in which the only alternative courses open to a Finance Minister are either to effect a sharp arrest of expenditure, even at the sacrifice of administrative efficiency, or to resort to increased taxation, cannot be considered to be a healthy condition. What is true of Imperial is equally true of Provincial finance. Some of the Hon'ble the Finance Member's remarks upon the excess expenditure—the tendency to outrun their grants—on the part of Local Governments would seem to suggest that the control exercised by the Central over the Local Governments is not constant, or, at any rate, not effective enough, to secure the necessary condition of unity between local and general expenditure. The Decentralisation Commission rightly insist that in no case can the financial powers of the Provincial Governments be so developed as entirely to eliminate the control of the Government of India, since the latter must remain responsible for the general efficiency of Provincial administration and could not allow a province to become hopelessly crippled or involved."

"Whether the small surplus which the Hon'ble Member has budgetted for will be realised or not is more than any one can say, but the position is undoubtedly grave. If there is no call for dark pessimism there is no occasion either for robust optimism. Knowing that the chief causes of fluctuations in revenue are beyond our control, the supreme need of persistent and general economy must be realised, and there will be good reason for congratulating the Hon'ble Member if the depressing experience of the year about to close is not repeated.

"My Lord, I beg to express the earnest hope that Your Excellency's Government will lose no time in investigating the whole subject of the high prices of food-stuffs prevailing. It was understood to be the object of Government to undertake the enquiry and to entrust it to officers of Government acting with outside experts. I do not know what the present intention of Government may be, but I trust an early opportunity will be taken to take the public into the confidence of Government. In view of the great suffering entailed upon certain classes of the population by the high prices ruling and their embarrassing effects upon both the Imperial and the Provincial budgets, it is desirable that an enquiry should be held. In this connection, my Lord, I observe that the Hon'ble the Finance Member anticipates a fall in prices. That anticipation seems to be scarcely justified. Indeed, so far as I am aware, the Provincial Governments do not seem to entertain any hope in that direction.

"I crave Your Excellency's permission to refer to a subject in which the Muhammadan community is much interested; I mean the management and administration of the Muhammadan charitable and religious endowments. We are grateful to the Government for managing these institutions which shows their great solicitude for the welfare of all sections of the Muhammadan population. Sometimes, and in some cases unfortunately, the management is not what it should be, and I would therefore respectfully suggest for Your Excellency's consideration the necessity of asking Local Governments and Administrations for a report on the management of such trusts existing

[*Nawab Saiyid Muhammad ; Maung Bah Too.*]

in various Provinces, and publishing it for general information. Such an enquiry will result in their better management and will also tend to satisfy the religious communities for whose benefit these institutions exist.

"Before concluding, my Lord, I cannot refrain from expressing, on behalf of the Presidency which I have the honour to represent, our most grateful thanks to His Majesty's Government and to Your Excellency for the great measures of reform so happily initiated. I would add the expression of our earnest hope that the scheme of reform announced by the Right Hon'ble the Secretary of State for India, with the warm-hearted support of Your Excellency's Government, may be carried through. It is not too much to say, my Lord, that the whole country is looking forward with eagerness to both the Houses of Parliament acting in unison in supporting the Indian reforms.

"My Lord, it will not be considered out of place if I venture respectfully to congratulate Your Lordship and His Majesty's Secretary of State for India on the appointment of the Hon'ble Mr. S. P. Sinha to Your Excellency's Executive Council for which the whole country is grateful. I feel in common with my countrymen that a great step forward has been taken and a momentous change effected which I hope will be followed by the happiest results."

The Hon'ble MAUNG BAH TOO said :—"My Lord, I am sorry that, owing to causes beyond his control, we are unable this year to congratulate the Hon'ble the Finance Member on the flourishing state of the Imperial finances. It may be hoped that brighter days are in store and that in future years he will present many prosperity Budgets.

"I ask leave to take the opportunity, the only opportunity afforded in the year, of calling attention to the needs and financial situation of the Province which I have the honour to represent. Financially, Burma has fallen on evil times, and I regret that I must ascribe its misfortunes in great part to the terms of the *quasi*-permanent Settlement imposed on the Province in the year 1907. Both my predecessor and myself pleaded, and pleaded in vain, for more generous treatment. The Settlement—it cannot be called a Contract—was concluded on its present basis.

"Now the theory of a Provincial Settlement, I understand, is that certain heads of revenue are shared between Imperial and Provincial, with the intention that expansion of revenue should provide for expansion of expenditure on the public needs. It is not expected that what are called the standard figures of expenditure should remain fixed and unalterable. It is recognized that if proper progress is to be made, with the growth of population and advance on modern lines, expenditure on vital objects such as, for instance, education, sanitation, public works, medical aid, will necessarily increase. In Burma, it has, I think, been recognized that something more than this is required; that for many years the development of the Province has been impeded by want of funds for Provincial expenditure. Even from the most rigidly economic point of view, increased expenditure is required, for it would be productive. In the interests of Imperial, no less than of Provincial, Funds, improvement of communications and the provision of proper establishments would be more than justified. But how has the theory of Settlement resulted in practice in Burma? The standard figures of revenue have been over-estimated and there has been no increase but rather a decrease in receipts under the most important heads. As for expenditure, so far from expansion being possible, notwithstanding that the Provincial balance has been reduced almost to the vanishing point, it has been necessary to place the estimate for public works at more than twelve lakhs less than the standard figures and to effect ruthless curtailment in all departments. The provision for ordinary public works, which experienced officers consider should not be less than 100 lakhs a year, has fallen to 69 lakhs against a standard figure of 80 lakhs. In consequence, establishments have had to be reduced, to the great distress of many persons who will be unexpectedly thrown out of employment; even works in progress have been stopped and no new works can be undertaken; the province must still be a bye-word, as well to residents, official and non-official, as to visitors,

[*Maung Bah Too ; Mr. Apcar.*]

in respect of its communications, sanitation, medical relief, education, contributions to local and municipal funds, all share in the common reduction and depression.

"My Lord, I hope I may be pardoned if I speak plainly but with due respect. I speak on behalf of all communities of my loyal Province, Europeans, Burmans, and the strangers within our gates, when I say that there is a strong and growing feeling that Burma does not receive a sufficient share of her revenues for expenditure on her needs. Cut off as we are by geographical position as well as by racial differences from the rest of the Empire, we feel that we are too often overlooked, that our needs are not recognized, that we do not receive that sympathetic care which is bestowed on other and more favoured provinces. It is my duty as a responsible member of this Council to say that this feeling is likely to spread through all classes of people in Burma who take an interest in public affairs.

"As regards the financial relations between the Imperial and Provincial Governments, it is, of course, not true, as many ill-informed people suppose, that Burma supports the Empire. Its actual annual contribution is less than that of any other Province except the Punjab, Eastern Bengal and Assam, and the Central Provinces. But it is true that its contribution to the Imperial Exchequer per head of population is greater than that of any other province except Bombay. It is estimated in the coming year to amount to the substantial sum of two millions and three-quarters sterling. Moreover, Burma is the only province, except again Bombay, of which in recent years the Provincial contribution has increased and is still increasing. According to the Budget figures the two Bengals and Assam are to contribute in 1908-1909 $2\frac{1}{2}$ crores less than in 1904-1905; Madras falls by over a crore; the United Provinces by a crore and a half; the Punjab by 25 lakhs; the Central Provinces by 65 lakhs. Bombay increases by 12 and Burma by 7 lakhs. Though Provincial expenditure in Burma has had to be reduced, the estimated contribution to Imperial in the year 1909-1910 is greater than the estimate for the current year.

"These bare figures are sufficiently striking. But did time permit me to enlarge on the needs of the Province, to show that merely from the economic point of view expenditure on a liberal scale would be justified, the picture could be made still more convincing. I am aware that Imperial finances are not in a position to enable aid to be given to Burma in the coming years. But I earnestly ask that our plight and our needs may be remembered and that when prosperity is restored our settlement may be revised, I will not say on a liberal, but on a sound economic and business-like footing."

The Hon'ble MR. APCAR said :—"It is extremely unfortunate that financial conditions have been so unsatisfactory as to oblige the Secretary of State to reduce the expenditure on railways from $18\frac{3}{4}$ crores to 15 crores.

"The Finance Committee's report gave hope that a more liberal supply of money would be available for railway work in the future, and I most sincerely trust that this hope may still be realized in future years and that the adoption of a figure of 15 crores is merely temporary.

"The very large reduction in railway earnings and the growth of working expenses, while producing for the last year disappointing results, seem to have been due to causes for which the Government cannot be held to blame.

"Throughout the world railways have had a bad year, the depression of trade affecting every country and naturally producing less receipts. As to working expenses, from the point of view of trade, the increase is explained and not so serious as it looks.

"The commercial community for some years past have urged on the Government of India the necessity of bringing the railways of India more up to date and put them in a better position to deal satisfactorily with a steady growth of trade. To do this large expenditure was necessary in renewals and